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Volume I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 428

SECURITIES AND EXCHANGE COMMISSION,
PETITIONER,

vs.

UNITED BENEFIT LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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CLERK'S NOTE—See Volume II for Exhibits

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,382

SECURITIES AND EXCHANGE COMMISSION, APPELLANT,

v.

UNITED BENEFIT LIFE INSURANCE COMPANY, APPELLEE.

JOINT APPENDIX

VOLUME I

RELEVANT DOCKET ENTRIES

1962

Oct. 1	Complaint, appearance, exhibits A & B filed
Nov. 13	Answer of deft to complaint; c/m 11/13/62. filed

1963

Mar. 5	Interrogatories by deft to pltff; c/s 3–5–63. filed
Mar. 5	Notice by deft to take depositions of Edwin W. Patterson and others. c/s 3–5–63. filed
Mar. 22	Answers of pltf to interrogatories; c/s 3/22/63. filed
Mar. 22	Motion of pltf for an order preventing depositions from being taken and for a protective order; P&A; affidavit; c/s 3/22/63; MC 3/22/63. filed
Mar. 22	Objections of pltf to certain interrogatories; P&A; c/s 3/22/63; MC 3/22/63. filed
Apr. 16	Opposition of deft to objections to interrogatories and to pltf's motion for order sur depositions; P&A; statement; c/s 4/16/63. filed

1963 Continued

Apr. 26 Exhibit A by pltf. to objections to interrogatories 3/22/63. filed

May 28 Amended answers by pltf to deft's interrogatories; c/s 5/28/63. filed

Jun. 7 Request by pltf for admissions of genuineness of documents and the truth of matters of fact, (annexes 2); c/s 6/7/63. filed

Jun. 10 Order granting motion of plaintiff that depositions of Commissioners & of Director of Division of Corporate Regulation, & of Edwin Patterson shall not be taken; sustaining objections of plaintiffs to interrogatories; and denying motion of plaintiff for protective order. (N) Youngdahl, J.

Jun. 20 Responses of defendant to plaintiffs request for admissions; c/s 6-19-63. filed

Jul. 2 Supplemental Request of plaintiff for admission by defendant of truth of matters of fact. c/s 6-28-63. filed

Jul. 15 Responses by defendant to supplemental requests for admissions. c/ser 7-15-63. filed

Sep. 12 Motion of deft for summary judgment, P&A, statement, affidavits (2), index to documents, documents 1, 2, 3, 4, 5a, 5b, 5c, 6, 7a, 7b, 7c, 7d, 8, 9, and 10. MC 9-12-63. filed

Oct. 18 Opposition of plaintiff to motion for summary judgment, Exhibit A, B,; P&A's, Affidavit (3); Statements (2) c/ser 10-12-63. filed

Dec. 17 Memorandum denying defendant's motion for summary judgment. (N) McGarraghy, J.

1964

Jan. 16 Order denying defendant's motion for summary judgment; denying motions by plaintiff and defendant for order ascertaining material facts in controversy; denying defendant's motion to impose sanctions of Rule 56(g) if it appears plaintiff has presented affidavits in bad faith. (N) McGarraghy, J.

1964 Continued

Dec. 23	Stipulation re: interrogatories; appendix A.
Dec. 23	Motion of parties to advance & assign to single judge. filed

1965

Jan. 5	Order assigning case to Judge Edward M. Curran for Pretrial & Trial & advancing case for trial. (N) (AC/N) (signed 1–4–65) McGuire, CJ.
Feb. 19	Pretrial Statement by pltff; c/m 2–15. filed
Feb. 24	Pretrial Statement by deft. filed
Mar. 10	Trial brief of deft; appendix. filed
Mar. 10	Trial memorandum by pltff; c/m 3–10–65. filed
Mar. 15	Hearing begun; respited to March 16, 1965. (Rep. B. Williamson) Curran, J.
Mar. 16	Hearing resumed; respited to March 22, 1965. (Rep. B. Williamson) Curran, J.
Mar. 17	Motion of deft to dismiss; MC 3–17–65; c/m 3–17. filed
Mar. 19	Opposition of pltf. to motion to dismiss; exhibit; c/m 3–19–65. filed
Mar. 19	Points & authorities in support of motion to dismiss; c/s 3–19; M.C. filed
Apr. 5	Findings of Fact & Conclusions of Law and Order dismissing the complaint on the merits. (N) Curran, J.
Apr. 15	Notice of appeal by plaintiff from order of 4/5/65; copy mailed to M. Joseph Stoutenburgh. filed
Apr. 28	Motion of plaintiff for leave to perpetuate testimony; exhibit; points and authorities; c/m 4/28/65; M.C. 4/28/65. filed
May 4	Opposition of defendant to motion to perpetuate testimony; points and authorities; c/ser. 5/4/65. filed
May 6	Motion to perpetuate testimony argued and denied. (Rep. G. Russell Walker) (Order to be presented) Curran, J.

1965 Continued

May 7	Exhibits #1, 2, 3, 4, 5, 6, 7, 8a, 8b, 8c, 9, 10, 11, 13, 14, 15, 16a, 16b, 16c, 16d, 16e, 17, 18 by plaintiffs. filed
May 10	Stipulation of counsel to correct transcript of proceedings. (fiat) Curran, J.
May 18	Order denying pltf's motion for leave to perpetuate testimony. (N) Curran, J.
June 4	Transcript of proceedings 5–6–65, pp. 1–17. (reported by G. Russell Walker. Court's copy.) filed

[Filed October 1, 1962]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

C.A. 3096 — '62

SECURITIES AND EXCHANGE COMMISSION, 425 Second Street, N.W., Washington 25, D. C., PLAINTIFF,

v.

UNITED BENEFIT LIFE INSURANCE COMPANY, 1666 Connecticut Avenue, N.W., Washington, District of Columbia, DEFENDANT.

COMPLAINT FOR INJUNCTION

1. This is an action by the Securities and Exchange Commission to enjoin the offer, sale and delivery after sale of two types of securities neither of which is registered under the Securities Act of 1933, as amended: (a) certain participations in a fund of securities, called the Flexible Fund A account of the United Benefit Life Insurance Company, which are being issued by the Flexible Fund A account and distributed by the defendant, United Benefit Life Insurance Company, purportedly as insurance annuity policies, and (b) guarantees of the securities issued by Flexible Fund A account which guarantees are in themselves securities being issued and distributed by the defendant. In addition, the Commission's action seeks to enjoin the defendant from distributing or redeeming any security issued by the Flexible Fund A account, or making any portfolio investments on its behalf, until that Fund is registered as an investment company in accordance with the provisions of the Investment Company Act of 1940, as amended.

2. It appears to the plaintiff, the Securities and Exchange Commission, that the defendant, United Benefit Life Insurance Company, is engaged and is about to engage in acts and practices which constitute and will constitute viola-

tions of Section 5(a)(1), 5(a)(2) and 5(c) of the Securities Act of 1933, as amended, 15 U.S.C. 77e(a)(1), 77e(a)(2) and 77e(c), and has engaged and is about to engage in acts and practices which constitute and will constitute violations of Section 7(b) of the Investment Company Act of 1940, 15 U.S.C. 80a–7(b). The Commission, pursuant to Section 20(b) of the Securities Act of 1933, 15 U.S.C. 77t(b), and Section 42(e) of the Investment Company Act of 1940, 15 U.S.C. 80a–41(e), brings this action to enjoin such acts and practices.

3. This court has jurisdiction of this action under Section 22(a) of the Securities Act of 1933, 15 U.S.C. 77v(a), and Section 44 of the Investment Company Act of 1940, 15 U.S.C. 80a–43.

4. The defendant is a corporation organized under the laws of the State of Nebraska which is qualified to do business and is doing business in the District of Columbia, and which maintains a place of business in the District of Columbia.

Count One

(Section 5(a)(1) of the Securities Act of 1933, as amended, 15 U.S.C. 77(e)(a)(1)).

5. Defendant is, directly or indirectly, making use of the mails and means or instruments of transportation and communications in interstate commerce to sell securities, namely, shares, interests or participations in a fund or pool of securities managed by defendant and known as the Flexible Fund A account of the United Benefit Life Insurance Company (hereinafter sometimes referred to as "the Flexible Fund").

6. The Flexible Fund is an unincorporated fund created pursuant to Chapter 217 of the laws of Nebraska, effective March 22, 1961. (Sections 44–310.06 through 44–310.08 of the Reissue Revised Statutes of Nebraska 1943, 1961 Cumulative Supplement.)

7. The Flexible Fund is engaged primarily and proposes to engage primarily in the business of investing, reinvesting and trading in securities.

8. The Flexible Fund is engaged and proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns and proposes to acquire investment securities having a value exceeding 40 percentum of the value of its total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

9. The Flexible Fund is issuing and proposes to issue securities, namely, shares, interests or participations in the Flexible Fund, which are described more fully in paragraphs 10 through 14 of this complaint.

10. Said shares, interests or participations in the Flexible Fund are represented by and described in a document which purports to be an annuity policy, a copy of which is marked "Exhibit A" and attached hereto as a part of this complaint, and are offered for sale to the public by the defendant by means of a prospectus, a copy of which is marked "Exhibit B" and attached hereto as a part of this complaint.

11. The document marked "Exhibit A" and the prospectus marked "Exhibit B" are each published and publicly disseminated by or at the instance and on behalf of the defendant.

12. The documents marked "Exhibit A" and "Exhibit B" represent, describe and offer for sale a security, the terms of which are as follows:

12(a) each purchaser of such security pays specified dollar amounts to the defendant on a periodic basis;

12(b) the defendant deducts its sales commission and other charges from such payments, and credits the net dollar balances to the Flexible Fund;

12(c) the assets of the Flexible Fund, including the balances described in paragraph 12(b) of this complaint and the securities and other assets acquired therewith, are held, invested and managed by the defendant for the benefit of purchasers of shares, interests or participations in the Flexible Fund;

12(d) the defendant will provide to the Flexible Fund, and the purchasers of such security will receive the benefit

of "full-time professional investment management";

12(e) the defendant will manage the Flexible Fund and apply an "investment policy" under which (i) the "major part" of the assets of the Flexible Fund will be invested by the defendant for the Fund in common stocks "chosen for high quality with emphasis on those having strong potential for long-term growth in earnings and values"; (ii) the investments will be diversified among different companies and industries, (iii) "dollar cost averaging" principles will be applied, (iv) investments will be continually reviewed and changed "when desirable or necessary" and (v) the assets of the Fund will be "kept fully invested";

12(f) each purchaser of such security acquires through his payments a proportionate share, interest or participation in the pool of securities, the Flexible Fund, managed by the defendant;

12(g) each purchaser's proportionate share, interest or participation in the Flexible Fund is subject to a monthly charge for investment management and mortality costs which is stated to be 83/1000 of 1% (equivalent to approximately 1% per year) and is diminished by that amount;

12(h) each purchaser's proportionate share, interest or participation in the Flexible Fund is credited by the defendant with additional dollar amounts representing the purchaser's proportionate share of any income on the securities held for the Flexible Fund, which amounts depend upon the performance of the Fund's portfolio and will be affected directly by defendant's management of the Flexible Fund;

12(i) each purchaser's proportionate share, interest or participation in the Flexible Fund is credited by the defendant with additional dollar amounts representing the purchaser's proportionate share of any capital gains, realized or unrealized, and debited by the defendant with dollar amounts representing the purchaser's proportionate share of any capital losses, realized or unrealized, on the securities held for the Flexible Fund, which amounts depend upon the performance of the Fund's portfolio and

will be affected directly by the defendant's management of the Flexible Fund;

12(j) each purchaser has the right, at his election at any time, to have paid to him in cash by the defendant from the assets of the Flexible Fund his proportionate share, interest, or participation in the Flexible Fund, including his proportionate share of any net income and net capital gains or losses, realized or unrealized, on the securities held for the Flexible Fund;

12(k) on a date specified in "Exhibit A" and referred to therein as the "Maturity Date" each purchaser has the right to have all sums standing to his credit in the Flexible Fund paid to him in cash, or, at his election, applied to the purchase from the defendant of an annuity computed on the basis of his age at that time. In effect, then, the purchaser simply redeems his interest in the investment company and purchases an annuity from the insurance company with the proceeds.

13. The nature of an interest, share or participation in the Flexible Fund whereby the purchaser participates in the investment experience of the Flexible Fund is such that the provisions of the Securities Act of 1933 and the Investment Company Act of 1940 and the Rules, Regulations and Forms thereunder are pertinent thereto and the application of the provisions of said Acts is necessary to adequately protect investors to whom the security is offered for sale and sold.

14. The prospectus marked "Exhibit B" omits to state material facts with respect to the matters set forth in paragraphs 14(a) through 14(l) inclusive, which facts are necessary in order to enable the persons to whom an interest, share or participation in the Flexible Fund is offered for sale and sold to make informed judgments with respect thereto.

14(a) The prospectus sets forth charts which show the value as of December 31, 1961 of a deposit of $100 per month since January 1, 1937 in a fund accumulated according to the Dow-Jones Industrial Averages, but fails

to disclose that the charts relate to and reflect the composite average produced by the fluctuation of market prices (performance) of a certain number of shares of a certain group of common stocks, whereas:

(i) the Flexible Fund includes or may include securities other than common stocks;

(ii) the Flexible Fund does not include or may not include all of the common stocks included in the group whose performance is reflected in the charts;

(iii) the Flexible Fund does not include or may not include holdings in such common stocks in the same proportions as the group of stocks whose performance is reflected in the charts; and

(iv) the Flexible Fund includes or may include common stocks other than those included in the group whose performance is reflected in the charts.

14(b) The prospectus represents that a Flexible Fund Annuity provides the three steps necessary to build a balanced and adequate estate, namely, (i) savings, (ii) insurance, and (iii) investment, and in that order, whereas, in fact, the Flexible Fund Annuity is not a savings vehicle and does not provide death benefit guarantees traditionally found in life insurance policies, but is primarily and predominantly a vehicle for investments in securities.

14(c) The prospectus states that the purchaser's payments are "savings" whereas, in fact, such payments are subjected to the risks of investments in common stock and other securities, and these risks are borne in substantial part by the purchaser since there is no promise that the payments will be returned to him undiminished.

14(d) The prospectus states that, "The Flexible Fund Annuity is unique because it combines the *opportunity* to share in the growth of our economy with the traditional *guarantees* inherent in life insurance policies." (underlining indicates italics in material quoted), but fails to state what guarantees, if any, traditionally inherent in life insurance policies are included in the Flexible Fund Annuity and what traditional life insurance guarantees are not included.

14(e) The prospectus states that, "And most important, your Flexible Fund Annuity has certain guaranteed values similar to other life insurance policies.", implying that the Flexible Fund Annuity is a life insurance policy, whereas, in fact, the Flexible Fund Annuity is not a life insurance policy and the payment upon the death of a purchaser of a Flexible Fund Annuity is not similar to death benefits traditionally guaranteed in life insurance policies.

14(f) The prospectus emphasizes to the purchaser the possibility, indeed the probability, of gain on his investment while inadequately disclosing the risks he will bear.

14(g) The prospectus states that, "Because capital gains, as well as earnings, are retained in the Fund, there is *no tax* to the policy-owner during the accumulation period", and that, "After allowance for Company income taxes, a monthly charge of only 83/1000 of 1% of the Fund is made to provide for investment management and mortality costs." (underlining indicates italics in material quoted), giving an impression that favorable tax benefits accrue to the purchaser from his participation in the Flexible Fund. The prospectus fails to disclose or does not adequately disclose (i) the tax status of the Flexible Fund with respect to federal and state income taxes, (ii) the tax status of the defendant company with respect to federal and state income taxes, (iii) the effect that defendant's tax status will have on the Flexible Fund, (iv) that under present tax laws, taxes on capital gains realized by the Flexible Fund are paid currently by defendant and charged against the Flexible Fund, with the result that the amount of such earnings retained by the Flexible Fund and available for crediting to the accounts of purchasers is thereby reduced, and (v) that the total expenses of the Flexible Fund, including taxes, may be materially more than a monthly charge of 83/1000 of 1%.

14(h) The prospectus states under the caption, "INVESTMENT POLICY", that:

> "The investment policy applied to the Flexible Fund is based on a proper balance of growth and stability —safety and income. The over-all philosophy is to

provide maximum return—combining value and income—with maximum safety.

"It is our policy to invest as much as possible in common stocks consistent with the above philosophy; that is, the major part in common stocks and the smaller part in fixed rate investments. The ratio of common stocks to total investments may increase or decrease from time to time as conditions dictate."

The prospectus does not disclose: (i) what is meant by the phrase "proper balance of growth and stability"; (ii) the approximate percentage of the total assets of the Flexible Fund to be placed in common stocks, and in preferred stocks and debt securities; (iii) the limitations, if any, on the defendant's discretion to vary such percentages; and (iv) the criteria to be followed by the defendant in determining increases or decreases in such percentages.

14(i) The prospectus states that the purchaser of a participation in the Flexible Fund will obtain the advantages of the "dollar cost averaging" method of investing, but fails to disclose the disadvantages and risks inherent in the "dollar cost averaging" method of investing.

14(j) The prospectus, having described the advantages of "dollar cost averaging", states that the defendant will employ "dollar cost averaging" in making investments for the Flexible Fund, but fails to disclose the disadvantages and risks inherent in that investment method and does not disclose upon what basis and to what extent "dollar cost averaging" will be followed in the management of the portfolio of the Flexible Fund.

14(k) The prospectus states that "investments are diversified among different companies and industries", but fails to state: (i) the maximum percentage of the assets of the Flexible Fund which may be invested in securities issued by companies of any one industry or group of industries; and (ii) the maximum percentage of the assets of the Flexible Fund which may be invested in the securities of any one issuer;

14(l) The prospectus states that the defendant has "assets in excess of $400,000,000", but fails to disclose adequate information concerning the financial status of the Flexible Fund. The prospectus does not set forth financial statements of the Flexible Fund, including a statement showing per share income and capital changes for a share outstanding throughout the year, a balance sheet or statement of assets and liabilities listing the securities held in the portfolio of the Flexible Fund showing their cost and value, a statement of income and expense and realized and unrealized gain or loss on investments, a statement showing the ratio of total operating and management expenses to total investment income, and a statement of changes in net assets of the Flexible Fund, prepared in accordance with generally accepted accounting principles and certified to by an independent Certified Public Accountant.

15. No registration statement under the Securities Act of 1933, as amended, is in effect with respect to the securities being issued by the Flexible Fund and offered for sale and sold to the public by the defendant.

Count Two

(Section 5(a)(2) of the Securities Act of 1933, as amended, 15 U.S.C. 77e(a)(2)).

16. Paragraphs 6 through 14 inclusive of this complaint are realleged and incorporated herein.

17. The defendant is, directly or indirectly, causing or about to cause the securities being issued by the Flexible Fund and offered for sale and sold to the public by the defendant to be carried through the mails or in interstate commerce for the purpose of sale or delivery after sale.

18. No registration statement under the Securities Act of 1933, as amended, is in effect with respect to such securities.

Count Three

(Section 5(c) of the Securities Act of 1933, as amended, 15 U.S.C. 77e(c)).

19. Paragraphs 6 through 14 inclusive of this complaint are realleged and incorporated herein.

20. The defendant is, directly or indirectly, making or about to make use of the mails and means or instruments of transportation and communication in interstate commerce to offer to sell through the use or medium of a prospectus or otherwise the securities being issued by the Flexible Fund and offered for sale and sold by the defendant.

21. No registration statement under the Securities Act of 1933, as amended, has been filed as to such securities.

Count Four

(Section 7(b) of the Investment Company Act of 1940, 15 U.S.C. 80a-7(b).

22. The Flexible Fund is an unincorporated fund created pursuant to Chapter 217 of the laws of Nebraska, effective March 22, 1961. (Sections 44-310.06 through 44-310.08 of the Reissue Revised Statutes of Nebraska 1943, 1961 Cumulative Supplement.)

23. The Flexible Fund is engaged primarily and proposes to engage primarily in the business of investing, reinvesting and trading in securities.

24. The Flexible Fund is engaged and proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns and proposes to acquire investment securities having a value exceeding 40 percentum of the value of its total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

25. The Flexible Fund does not have a board of directors.

26. The Flexible Fund is issuing and proposes to issue

securities, namely, shares, interests or participations in the Flexible Fund which are described in paragraphs 10 through 14 of this complaint.

27. The defendant is the depositor of and underwriter for an investment company, namely, the Flexible Fund.

28. The defendant is engaged and is about to engage, directly or indirectly, by use of the mails and means or instrumentalities of interstate commerce:

(a) in offering for sale, selling and delivering after sale, securities and interests in securities of which the Flexible Fund is the issuer, namely, securities described in paragraphs 10 through 14 of this complaint;

(b) in purchasing, redeeming, or otherwise acquiring securities and interests in securities of which the Flexible Fund is the issuer, namely, securities described in paragraphs 10 through 14 of this complaint;

(c) in selling or purchasing securities and interests in securities for the account of or on behalf of the Flexible Fund.

29. The Flexible Fund is not registered with the Securities and Exchange Commission as an investment company in accordance with Section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a-8, and is not exempt under Section 6 of that Act.

Count Five

(Section 5(a)(1) of the Securities Act of 1933, as amended, 15 U.S.C. 77e(a)(1)).

30. The defendant is, directly or indirectly, making use of the mails and means or instruments of transportation and communication in interstate commerce to sell securities, namely, guarantees of the securities issued by the Flexible Fund which are described in paragraphs 10 through 14 of this complaint, which guarantees are in themselves securities being issued by the defendant.

31. Said guarantees of the securities issued by the Flexi-

ble Fund are described in the prospectus marked "Exhibit B", which states, in part, as follows:

> "To lessen the impact of any unusual, prolonged downward trend of the stock market, United of Omaha guarantees that after premiums have been paid for 10 full years *the value of a Flexible Fund Annuity policy can never be less than the sum of the net premiums invested in the fund.*
>
> • • • • • •
>
> "Regardless of the value [at the time a purchaser stops his plan] United of Omaha guarantees that the value of his policy can never be less than the following percentages of the *net premiums:*

Premiums Paid For	
one full year	50%
two full years	55%
three full years	60%
four full years	65%
five full years	70%
six full years	75%
seven full years	80%
eight full years	85%
nine full years	90%
ten full years	100%"

(Underlining indicates italics in material quoted.)

Since the net premium is explained in the prospectus ("Exhibit B") as the balance of the regular premium after deductions for sales and service charges and is defined in both "Exhibit A" and "Exhibit B" as 50% of the regular policy premium in the first policy year, 90.5% of the regular policy premiums in the second through the tenth policy years, and 95% of regular policy premiums in the eleventh and subsequent years, the defendant's guarantee of minimum values actually promises repayment of only the following percentages of the *total* premiums paid to the defendant:

Total premiums paid	Guarantees expressed as a percent of total premiums
1 full year	25.0
2 full years	38.6
3 " "	46.2
4 " "	52.2
5 " "	57.7
6 " "	62.8
7 " "	67.8
8 " "	72.6
9 " "	77.4
10 " "	86.5
11 " "	87.2
12 " "	87.9
13 " "	88.4
14 " "	88.9
15 " "	89.3
16 " "	89.7
17 " "	90.0
18 " "	90.3
19 " "	90.5
20 " "	90.7

As a result of the influence of the lower net premiums during the first ten policy years, no matter how long the pay-in period may be, the guaranteed amount can never attain as much as 95% of the total premiums paid.

32. Said guarantees by the defendant of the securities issued by the Flexible Fund are also described in and are represented by the document marked "Exhibit A".

33. The document marked "Exhibit A" and the prospectus marked "Exhibit B" are each published and publicly disseminated by or at the instance and on behalf of the defendant.

34. The prospectus marked "Exhibit B" omits to state material facts with respect to the matters set forth in paragraphs 34(a) and 34(b), which facts are necessary in order to enable persons to whom a guarantee of the security issued by the Flexible Fund is offered for sale and sold to make informed judgments with respect thereto.

34(a) The prospectus states that the defendant guarantees certain minimum values of each purchaser's interest in the Flexible Fund during the accumulation period, but

fails to disclose whether, and the extent to which, assets of the defendant have been segregated for the purpose of such guarantee and whether, and the extent to which, other obligations of the defendant have equal or prior claim on defendant's assets.

34(b) The prospectus states that, "The Flexible Fund Annuity is backed by the reputation and the resources of United of Omaha . . .", that defendant guarantees the minimum values and has "assets in excess of $400,000,000," but fails to set forth financial statements of defendant, including a balance sheet or statement of assets and liabilities, and an income statement for the latest fiscal year prepared in accordance with generally accepted accounting principles and certified to by an independent Certified Public Accountant.

35. No registration statement under the Securities Act of 1933, as amended, is in effect with respect to the securities being issued and offered for sale and sold to the public by the defendant.

Count Six

(Section 5(a)(2) of the Securities Act of 1933, as amended, 15 U.S.C. 77e(a)(2)).

36. Paragraphs 31 through 34 inclusive of this complaint are realleged and incorporated herein.

37. The defendant is, directly or indirectly, causing or about to cause the securities described in paragraphs 31 through 34 of this complaint to be carried through the mails or in interstate commerce for the purpose of sale or delivery after sale.

38. No registration statement under the Securities Act of 1933, as amended, is in effect with respect to such securities.

Count Seven

(Section 5(c) of the Securities Act of 1933, as amended, 15 U.S.C. 77e(c)).

39. Paragraphs 31 through 34 inclusive of this complaint are realleged and incorporated herein.

40. The defendant is, directly or indirectly, making or about to make use of the mails and means or instruments of transportation and communication in interstate commerce to offer to sell through the use or medium of a prospectus or otherwise the securities described in paragraphs 31 through 34 of this complaint.

41. No registration statement under the Securities Act of 1933, as amended, has been filed as to such securities.

* * * * * *

42. The defendant United Benefit Life Insurance Company will, unless restrained and enjoined, continue to engage in the acts and practices set forth in this complaint.

WHEREFORE, the plaintiff prays that this Court:

1. Grant a preliminary and final injunction restraining and enjoining the defendant, its officers, directors, agents, servants, employees, successors and assigns, and each of them, from directly or indirectly:

(a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell the securities referred to and described in paragraphs 10 through 14 and 31 through 34 of this complaint, and any similar securities, through the use or medium of any prospectus or otherwise, unless and until registration statements under the Securities Act of 1933, as amended, are in effect with the Securities and Exchange Commission as to such securities; or

(b) carrying or causing to be carried through the mails or in interstate commerce, by any means or in-

struments of transportation, the securities referred to and described in pragraphs 10 through 14 and 31 through 34 of this complaint, and any similar securities, for the purpose of sale or for delivery after sale unless and until registration statements under the Securities Act of 1933, as amended, are in effect with the Securities and Exchange Commission as to such securities; or

(c) carrying or causing to be carried through the mails or in interstate commerce the securities referred to and described in paragraphs 10 through 14 and 31 through 34 of this complaint, and any similar securities, for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of Section 10 of the Securities Act of 1933, as amended, 15 U.S.C. 77e(b)(2); or

(d) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell the securities referred to and described in paragraphs 10 through 14 and 31 through 34 of this complaint, and any similar securities, through the use or medium of any prospectus or otherwise, unless and until registration statements under the Securities Act of 1933, as amended, are filed with the Securities and Exchange Commission as to such securities.

2. Grant a preliminary and final injunction restraining and enjoining the defendant, its officers, directors, agents, servants, employees, successors and assigns, and each of them, from directly or indirectly, by use of the mails or any means or instrumentality of interstate commerce;

(a) offering for sale, selling, or delivering after sale, any security or any interest in a security issued by the fund known as the Flexible Fund A Account of United Benefit Life Insurance Company, or any other similar investment company created under the laws of the United States or of a State, of which investment

company the defendant is a depositor or underwriter; or

(b) purchasing, redeeming, or otherwise acquiring any security or interest in a security issued by the fund known as the Flexible Fund A Account of United Benefit Life Insurance Company, or any other similar investment company created under the laws of the United States or of a State, of which investment company the defendant is a depositor or underwriter; or

(c) selling or purchasing any securities or interests in securities, by whomsoever issued, for the account or on behalf of the fund known as the Flexible Fund A Account of United Benefit Life Insurance Company, or any other similar investment company created under the laws of the United States or of a State, of which investment company the defendant is a depositor or underwriter;

unless such investment company is registered as an investment company with the Securities and Exchange Commission in accordance with Section 8 of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–8.

3. Grant such other and further relief as the Court may deem meet.

Of Counsel:

/s/ SOLOMON FREEDMAN,
Associate Director.

/s/ ALAN R. GORDON,
Chief Counsel.

/s/ CHARLES T. GOOLSBEE,
Attorney.

Division of Corporate Regulation,
Securities and Exchange Commission,
Washington, D. C.

/s/ PETER A. DAMMANN,
General Counsel.

/s/ WALTER P. NORTH,
Associate General Counsel.

/s/ GEORGE P. MICHAELY, JR.,
Special Counsel.

/s/ ROBERT L. MCCLOSKEY,
Attorney.

Securities and Exchange Commission,
Washington, D. C.

Dated:

DISTRICT OF COLUMBIA,
City of Washington, ss:

Abraham A. Raizen, being first duly sworn, deposes and says:

I am employed by the Securities and Exchange Commission as Assistant Director of the Division of Corporate Regulation; my responsibilities relate to the administration of the Investment Company Act of 1940 and to the registration of companies thereunder. I have read the foregoing complaint and am familiar with the matters alleged and, upon information and belief, the facts set forth therein are true and correct.

/s/ ABRAHAM A. RAIZEN.

[Exhibits to complaint omitted.]

[Jurat omitted.]

[Filed November 13, 1962]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 3096–62

SECURITIES AND EXCHANGE COMMISSION, 425 Second Street, N.W., Washington 25, D.C., PLAINTIFF,

v.

UNITED BENEFIT LIFE INSURANCE COMPANY, 3316 Farnam Street, Omaha 31, Nebraska, DEFENDANT

ANSWER TO COMPLAINT FOR INJUNCTION

First Defense

1. The Complaint and Counts One, Two, Three, Four, Five, Six and Seven thereof fail to state any claim upon which relief can be granted against defendant.

Second Defense

2. Defendant denies each and every allegation of the Complaint except insofar as any allegation of any paragraph or any subparagraph of the Complaint is admitted in paragraphs 3 through 18 of this Answer.

3. Defendant denies the allegations of paragraph 1, except that defendant admits that the present action is brought by plaintiff, the Securities and Exchange Commission, and admits and avers that defendant has written, is writing, and intends to write annuity policies which contain, among other things, provisions which constitute contractual guarantees on defendant's part in favor of holders of such annuity policies.

4. Defendant avers that the allegations of paragraph 2 are mere statements of conclusions of law and of plaintiff's opinion and not statements of fact, and need not be

answered by defendant; if answer be required defendant denies the said allegations.

5. Defendant denies the allegations of paragraph 3, except that defendant admits that plaintiff is seeking to invoke the jurisdiction of this Court, and is relying upon section 22(a) of the Securities Act of 1933, hereinafter referred to as "the 1933 Act", 15 U.S.C. section 77v.(a) and upon section 44 of the Investment Company Act of 1940, hereinafter referred to as "the 1940 Act", 15 U.S.C. section 80a–43.

6. Defendant denies the allegations of paragraph 4, except that defendant admits and avers that it is a corporation organized under the laws of the State of Nebraska, and that it is qualified to do business, has done business, and is doing business in the District of Columbia.

7. Defendant denies the allegations of paragraph 6, except that defendant admits that it now maintains and intends to maintain a separate account, known as the Flexible Fund A account, under the authority of the Nebraska statute which authorizes such separate accounts, Legislative Bill 301, Session Laws of Nebraska, 1961, chapter 217, effective March 22, 1961, sections 44–310.06 to 44–310.08 of *Reissue Revised Statutes of Nebraska, 1943, 1961 Cumulative Supplement*, hereinafter referred to as "R. S. Supp. 1961", in connection with the Annual Premium Flexible Fund Retirement Annuity policies, Form 560, Series 114L, which have been written by defendant since March, 1962, and in connection with said Annual Premium Flexible Fund Retirement Annuity policies which defendant intends to write in the future.

8. Defendant denies the allegations of paragraphs 10 and 33, except that defendant admits and avers that Exhibit A attached to the Complaint is a specimen copy of the Annual Premium Flexible Fund Retirement Annuity policy, one of the types of annual premium deferred annuity policies written by defendant, and admits and avers that Exhibit B attached to the Complaint is a folder prepared by defendant which contains a description of the said policy.

9. Defendant denies the allegations of paragraph 11, except that defendant admits and avers that documents in the form of Exhibits A and B have been published and disseminated by defendant.

10. Defendant denies the allegations of paragraph 12, except that defendant admits and avers, as follows:

(a) Exhibit A attached to the Complaint constitutes a specimen copy of the Annual Premium Flexible Fund Retirement Annuity policy written by defendant; the provisions of said annuity policy speak for themselves, and the legal effect of the contract will be decided by the Court; and the allegations of the subparagraphs of paragraph 12 which assert plaintiff's version of the legal effect of the said contract are mere statements of conclusions of law and of plaintiff's opinion and not statements of fact, and need not be answered by defendant.

(b) Exhibit B contains a description of the provisions of said Annual Premium Flexible Fund Retirement Annuity policy; said description is not relevant or material to a determination of the legal effect of the provisions of the Annual Premium Flexible Fund Retirement Annuity policy; and the allegations of subparagraphs of paragraph 12 which are predicated upon phrases from Exhibit B taken out of context are mere statements of conclusions of law and of plaintiff's opinion and not statements of fact, and need not be answered by defendant.

(c) Defendant admits that words which are quoted in subparagraphs (d), (e) and (k) of paragraph 12 appear, but in context, in Exhibits A or B attached to the Complaint.

(d) Defendant incorporates herein by reference the allegations of paragraphs 47 to 51 of this Answer, with like effect as if herein fully repeated.

11. Defendant denies the allegations of paragraph 14, except that defendant admits and avers that:

(a) Exhibit B contains charts which speak for themselves; and Exhibit B is not relevant or material to a determination of the legal effect of the provisions of the

Annual Premium Flexible Fund Retirement Annuity policy.

(b) The allegations of subparagraphs of paragraph 14 are mere statements of conclusions of law and of plaintiff's opinion and not statements of fact, and need not be answered by defendant.

(c) Defendant admits that the words quoted in subparagraphs (c), (d), (e), (h), (i), (j), (k), and (l) of paragraph 14 appear, but in context, in Exhibit B attached to the Complaint.

(d) Defendant incorporates herein by reference the allegations of paragraphs 47 to 51 of this Answer, with like effect as if fully repeated herein.

12. Defendant admits with respect to the allegations of paragraphs 15, 18 and 21 that the Annual Premium Flexible Fund Retirement Annuity policy issued by defendant is not registered as a security under the 1933 Act, as amended; but defendant avers that no registration under the said Act is required for the reason that said policy is not a security but an annuity contract, and defendant incorporates herein by reference the allegations of paragraphs 47 to 51 of this Answer, with like effect as if fully repeated herein.

13. Defendant admits and avers with respect to the allegations of paragraphs 35, 38 and 41 that provisions of the Annual Premium Flexible Fund Retirement Annuity policy which consist of guarantees of the cash value of the said policy, including the guarantee of the Minimum Cash Value of the said policy, are not registered as a security under the 1933 Act, as amended; but defendant avers that no registration under the said Act is required for the reason that neither the said policy nor any isolated provisions thereof are or can be a security; and defendant incorporates herein by reference the allegations of paragraphs 47 to 51 of this Answer and paragraph 59 of this Answer, with like effect as if fully repeated herein.

14. Defendant denies the allegations of paragraph 22, except that defendant admits and avers that the Flexible

Fund A account is maintained by defendant pursuant to sections 44–310.06 to 44–310.08 of R.S. Supp. 1961.

15. Defendant admits with respect to the allegations of paragraph 25 that the Flexible Fund A account, a separate account maintained by defendant under sections 44–310.06 to 44–310.08 of R. S. Supp. 1961, does not have a board of directors; but defendant avers that the said separate account is neither a corporation, nor a company, nor a separate entity; and defendant incorporates herein by reference the allegations of paragraphs 53 to 58 of this Answer, with like effect as if fully repeated herein.

16. Defendant admits with respect to the allegations of paragraph 29 that the Flexible Fund A account, a separate account maintained by defendant under sections 44–310.06 to 44–310.08 of R. S. Supp. 1961, is not registered as an investment company under the 1940 Act; but defendant avers that said separate account is neither an entity, nor a person, nor a company, nor an investment company, within the meaning of the 1940 Act; and in the event that said separate account were held to be an entity, or a person, or a company, or an investment company, said separate account would be exempt from registration under the 1940 Act; and defendant incorporates herein by reference the allegations of paragraphs 53 to 58 of this Answer, with like effect as if fully repeated herein.

17. Defendant denies the allegations of paragraph 31, except that defendant admits and avers, as follows:

(a) Exhibit B is not relevant or material to a determination of the legal effect of the provisions of the Annual Premium Flexible Fund Retirement Annuity policy written by defendant.

(b) The words quoted appear, but in context, in Exhibit B.

(c) Defendant guarantees the Minimum Cash Value of the Annual Premium Flexible Fund Retirement Annuity policy written by defendant, in the percentages of the gross premiums paid, as shown in paragraph 31, during the first 20 years during which the policy is in effect, and with the result that after the 17th year the guaranteed Minimum

Cash Value will exceed 90 percent of the total gross premiums paid.

18. Defendant denies the allegations of paragraph 34, except that defendant admits and avers, as follows:

(a) Exhibit B is not relevant or material to a determination of the legal effect of the provisions of the Annual Premium Flexible Fund Retirement Annuity policy.

(b) Exhibit B contains, but in context, the words quoted.

(c) The allegations of subparagraphs (a) and (b) of paragraph 34 constitute statements of conclusions of law and of plaintiff's opinion and not statements of fact, and need not be answered by defendant.

Third Defense

19. (a) In defendant's business generally and in defendant's business of writing the Annual Premium Flexible Fund Annuity policy defendant was and is engaged in business as an "insurance company" within the meaning of section 2(a)(17) of the 1940 Act, 15 U.S.C. section 80a–2(a)(17); and as an insurance company defendant is not and cannot be treated as an investment company, by virtue of section 3(c)(3) of the 1940 Act, 15 U.S.C. section 80a–3(c)(3).

(b) In defendant's business generally and in defendant's business of writing the Annual Premium Flexible Fund Retirement Annuity policy defendant was not and is not engaged in business as an "investment company" within the meaning of sections 3(a)(1), (2) or (3) of the 1940 Act, 15 U.S.C. sections 80a–3(a)(1), (2) or (3).

(c) In defendant's business generally and in defendant's business of writing the Annual Premium Flexible Fund Retirement Annuity policy defendant is not an "issuer" within the meaning of section 2(4) of the 1933 Act, 15 U.S.C. section 77b. (4); or within the meaning of section 2(a)(21) of the 1940 Act, 15 U.S.C. section 80a–2(a)(21); or within the meaning of section 3(a)(8) of the Securities and Exchange Act of 1934, hereinafter referred to as "the 1934 Act", 15 U.S.C. section 78c.(a)(8).

20. Defendant is a corporation organized and existing as an insurance company under the laws of the State of Nebraska, with its principal place of business in the City of Omaha, Douglas County, Nebraska. Defendant was organized in 1926, and at all times since then defendant has existed, and is presently existing, solely as an insurance company; at all times since 1926 defendant has engaged, and is presently engaged, solely in the business of insurance within the meaning of section 44–102 of *Reissue Revised Statutes of Nebraska, 1943,* hereinafter referred to as "R.S. 1943".

21. The nature of the business in which defendant has engaged, and is presently engaged, is described in Article II of defendant's Amended Articles of Incorporation, as follows:

> The nature of the business to be transacted, and the objects and purposes of the Company are to make Insurance upon the lives of individuals; and all and every Insurance pertaining thereto or connected therewith, including the granting, purchasing and disposing of Annuities and Endowments and including Double Indemnity and Disability Benefits; and if the Board of Directors shall deem it prudent at any time, to conduct also an Accident and Health Insurance Department.

22. Defendant is an insurance corporation which was formed for the purpose, in part, of writing life insurance including annuities; defendant was formed to write life insurance within the meaning of section 44–201(2) of R.S. 1943.

23. Defendant is presently registered to do business as an insurance company in each state of the United States, except for New York, and in the District of Columbia, Guam, Puerto Rico, the Canal Zone, the Virgin Islands, the Dominion of Canada and the Republic of Panama. As of June 30, 1962, defendant had assets in excess of $400,000,000 and capital and surplus in excess of $51,900,000,

and defendant has in force currently in excess of $2,800,000,000 worth of insurance.

24. Section 81–501 of R.S. 1943 (formerly section 44–104 of R.S. 1943) provides, in part, that the Department of Insurance shall have general supervision, control and regulation of insurance companies, associations and societies, and the business of insurance in Nebraska. Defendant has engaged in business and is presently engaged in business as an insurance company subject in all respects to the general supervision and control and regulation of the Department of Insurance of the State of Nebraska, and subject to the laws of Nebraska relating to insurance and to the Rules and Regulations of the Department of Insurance of the State of Nebraska.

25. Defendant has been and is subject to section 44–107 of R.S. 1943 which provides:

> The Department of Insurance shall cause each domestic company to be examined at least once every three years, and cause its affairs to be thoroughly inspected and examined to ascertain its true financial condition, its ability to meet and to fulfill its obligations, whether it has complied with the provisions of the law, and all other facts that may be required relating to its business, methods, and management, and its dealings with its policyholders. Whenever it deems it advisable, it shall cause a complete audit of the books and accounts of the company to be made by a disinterested expert accountant.

26. Defendant engages in the business of insurance subject to the supervision, control and regulation of the insurance department or insurance commissioner or director or similar agency or official of each of the states of the United States in which it is authorized to do business and of the District of Columbia.

27. In addition to the examination of defendant's affairs referred to in paragraph 25 hereof, defendant is subject to an examination of its affairs by the insurance department or insurance commissioner or director or similar

agency or official of each state in which it is authorized to do business and of the District of Columbia. This Triennial Convention Examination takes place, at least, every third year under the Rules and Regulatons of the National Association of Insurance Commissioners (N.A.I.C.). Copies of the report of the Triennial Convention Examination of defendant's affairs are filed with the appropriate agency or official of each of the said states and of the District of Columbia. In addition, defendant files each year an Annual Statement in the form prescribed by the National Association of Insurance Commissioners with the appropriate agency or official of each of the said states and of the District of Columbia.

28. Since 1926 defendant has written, and defendant is writing at present, and intends to write, only life insurance including annuities, and accident and sickness policies, in accordance with Nebraska law and with the laws of each of the other states of the United States in which it is authorized to do business and of the District of Columbia. The forms of the insurance policies which defendant has written and is writing and intends to write have been approved by the Department of Insurance of the State of Nebraska.

29. At present defendant writes two types of annual premium optional deferred annuity policies. Both types of policy contain the standard provisions required in annuity policies by the relevant provisions of Reissue Revised Statutes of Nebraska, 1943; and both types of policy have been approved by the Department of Insurance of the State of Nebraska as in conformity therewith. The one type of annual premium deferred optional annuity policy, which has been written by defendant for many years, is known as the Annual Premium Deferred Retirement Annuity policy. The other type of annual premium deferred optional annuity policy, which has been written by defendant since March 1962, is known as the Annual Premium Flexible Fund Retirement Annuity policy, a specimen copy of which is attached to the complaint as Exhibit A.

30. The two types of annual premium deferred optional

annuity policies referred to in paragraph 29 are both policies of life insurance within the conventional meaning of life insurance and within the meaning of Nebraska law. Each type of annuity constitutes a single integrated contract, which is acquired by a policyholder interested primarily in retirement annuity income in a fixed monthly dollar amount. Both types of policies are sold on a long-term basis, not less than ten years. Both types of annuity policies are issued by defendant, an insurance company, and contain those elements which are present in any conventional annual premium deferred optional annuity policy, including the following:

(a) Group sharing of longevity with a basic spread of risk between those who die early and those who die late, with use of reserves which are released by those who die early to sustain benefit payments to those who die late, with overall benefit payments to each annuitant significantly dependent upon his lifetime.

(b) A guarantee by defendant that no matter how long the policyholder (or the entire group of policyholders) lives, the fixed dollar amount of periodic monthly payments after maturity will not be thereby affected.

(c) Settlement options, exercisable by the annuitant, involving life contingencies on guaranteed mortality bases, and with guaranteed interest rates.

(d) Settlement options, exercisable by the beneficiary for no additional consideration, on guaranteed mortality bases and with guaranteed interest rates. Under (c) and (d) hereof defendant guarantees to the annuitant, or to the beneficiary, the rates at which income may be purchased at any time in the future for periods as distant as thirty years, despite the current trend toward significantly increased longevity of the population of the United States.

(e) Prior to the Maturity Date, a guaranteed Minimum Cash Value of the policy, obtainable by the annuitant upon surrender of the policy.

(f) Prior to the Maturity Date, a guaranteed death benefit payable to the beneficiary upon the annuitant's death.

(g) A guarantee of the expense margin on which the policy rates are predicated; so that defendant assumes the risk that defendant's expenses may exceed the said expense margin.

31. Both types of annuity policies written by defendant contain contractual provisions found in annuity policies generally, as follows:

(a) A grace period of thirty-one days is granted for the payment of every premium after the first premium, during which period the policy remains in force.

(b) At any time within three years after the due date of a premium in default the policy may be reinstated upon payment of arrears of premiums.

(c) If any premium remains unpaid at the end of the grace period, and the annuitant has not requested payment of the cash value, the then accumulated value is further accumulated until the Maturity Date, and then applied to purchase annuity income in accordance with the Table of Annuity Options for the option selected.

(d) No change or modification may be made except by agreement in writing.

(e) The policy is incontestable after it has been in force during the lifetime of the annuitant for two years from its date of issue, except for non-payment of premiums, and except as to provisions and conditions, if any, relating to benefits in the event of total and permanent disability.

(f) The right to change the beneficiary is reserved by the annuitant unless revocation of such right has been made in writing by the annuitant and acknowledged by the defendant. If the right to change has not been revoked, the annuitant may change any beneficiary designation by notice to the defendant.

(g) Assignment of the policy is binding upon defendant when the original or a duplicate of the assignment is filed with the defendant at its home office.

(h) A policy loan, or partial withdrawal of the cash value of the policy, may be made by the annuitant.

32. Section 44–310.06 to section 44–310.08 of R.S. Supp. 1961, provides, as follows:

> [Section 44–310.06] Any domestic life insurance company may, after adoption of resolution by its board of directors and certification thereof to the insurance commissioner, allocate to one or more separate accounts, pursuant to the provisions of applicable contracts, any amounts which are paid to such company in connection with a pension, retirement, or profit-sharing plan or annuity, and which are to be applied to purchase annuities or retirement benefits under such company's policies or contracts and to provide other benefits incidental thereto. The income, if any, and gains or losses, realized or unrealized, on each such account may be credited to or charged against the amount allocated to such account in accordance with such contract, without regard to the other income, gains, or losses of the company. The amounts allocated in such accounts and accumulations thereon may be invested and reinvested in any class of loans and investments authorized for domestic life insurance companies and such loans and investments shall not be included in applying the limitations provided in section 44–310.02. Amounts allocated by a life insurance company to separate accounts in the exercise of the power granted by sections 44–310.06 to 44–310.08 shall be owned by the company, and the company shall not be, or hold itself to be, a trustee in respect to such amounts. [Source: Laws 1961, c. 217, § 1, Effective date March 22, 1961.]
>
> [Section 44–310.07] Any domestic life insurance company which has separate accounts, to reserve, pension, retirement or profit-sharing plans or annuities, shall maintain a separate surplus account for the benefit of holders of such contracts from which it may, in the discretion of its board of directors, apportion dividends to the holders of such contracts. [Source: Laws 1961, c. 217, § 2, Effective date March 22, 1961.]

[Section 44–310.08] No investment in such separate account or in the domestic life insurance company's general investment account shall be transferred by sale, exchange, substitution or otherwise from one account to another. [Source: Laws 1961, c. 217 § 3, Effective date March 22, 1961.]

33. On December 26, 1961, the Board of Directors of defendant passed the following Resolution:

RESOLVED, That the officers be and are hereby authorized and directed to establish one or more segregated accounts, as permitted by LB 301 passed by the 1961 Nebraska Legislature, as they from time to time shall deem advisable;

BE IT FURTHER RESOLVED, That the proposed Flexible Fund Annuity, Form 560–Series 114L, is hereby authorized to be issued under said segregated account statute, and the officers be and they are hereby authorized and directed to file said Policy for approval in all jurisdictions in which the Company is licensed to do business;

BE IT FURTHER RESOLVED, That for the purposes of establishing said segregated account or accounts, the officers be and they are hereby authorized and directed to transfer to such account or accounts such amount of General Surplus as is deemed advisable;

BE IT FURTHUR RESOLVED, That the Investment Committee shall have all investment powers over the segregated account or accounts as they have been previously granted generally.

34. Defendant's Annual Premium Flexible Fund Retirement Annuity policy has been authorized for sale and issuance as an insurance policy by the insurance department or insurance commissioner or director or similar agency or official of the following states: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Hawaii,

Massachusetts, Montana, Nebraska, Nevada, Oregon, Tennessee, Utah, Vermont and Virginia.

35. The Annual Premium Flexible Fund Retirement Annuity policy written by defendant is an annual premium optional deferred annuity. It differs from the other type of annual premium optional annuity written by defendant, the Annual Premium Deferred Retirement Annuity policy, only in the respect that under the Annual Premium Deferred Retirement Annuity policy defendant agrees to accumulate the amounts of the net premiums paid by the policyholder at the rate of 2½ percent, while under the Annual Premium Flexible Fund Retirement Annuity policy defendant agrees to accumulate the amounts of the net premiums in accordance with a formula described in the policy, which formula is predicated upon the income from and upon the market value of defendant's investments which are allocated to the separate account maintained under section 44–310.06 to section 44–310.08 of R.S. Supp. 1961.

36. Incidental to its business of insurance, defendant makes investments, in the manner and subject to the restrictions provided for by the relevant sections of R. S. 1943.

37. Section 44–310.06 of R. S. Supp. 1961, as quoted in paragraph 32 of this Answer, provides, in part, with regard to separate accounts that:

> • • • The amounts allocated in such accounts and accumulations thereon may be invested and reinvested in any class of loans and investments authorized for domestic life insurance companies and such loans and investments shall not be included in applying the limitations provided in section 44–310.02. • • •

38. Section 44–310.02 of R. S. 1943 provides that:

> No life insurance company shall be permitted to invest (1) more than ten per cent of its admitted assets in the securities described in subdivision 9 of section 44–309, or (2) a combined total amount of

more than ten percent of its admitted assets in the securities described in subdivisions (10) and (11) of section 44–309. The value of any such investment in securities described in subdivisions (9), (10), and (11) of section 44–309 for the purpose of applying the foregoing limits shall be the cost of any such investment to the life insurance company.

39. Section 44–309 of R. S. 1943 provides, in pertinent part:

> The capital, surplus, and other funds, or any part thereof, of every domestic life insurance company may be invested as provided in the following subdivisions (1) to (14), and sections 44–311.02 and 44–311.03:
>
> * * * * *
>
> (9) In the preferred stock of any corporation which has earned and paid regular dividends at the regular prescribed rate each year, upon its preferred stock for not less than five years next preceding the purchase of such preferred stock, or during such part of said five-year period as it shall have had preferred stock outstanding, and which corporation or its predecessor shall have earned each year during said five-year period dividends upon its stocks of at least one hundred thousand dollars;
>
> (10) In the common stocks of any corporation which shall have had earnings available for payment of dividends on its common stocks of not less than two hundred fifty thousand dollars per annum, for not less than seven years next preceding the purchase of such stocks, except that in cases of corporations having a majority of their operations in the State of Nebraska, the requirements as to the amount of earnings available for payment of dividends on its common stocks shall be twenty-five thousand dollars per annum;
>
> (11) In shares, interest or participation certificates in any management type of investment trust, corpo-

rate or otherwise; *Provided* that the assets of such investment trust shall be not less than ten million dollars at the date of purchase; *and provided further*, that not more than five per cent of the assets of any insurance company may be invested in such shares, interests, or participation certificates;

* * * * *

40. Defendant's investments which are allocated to the separate account under Nebraska law, Flexible Fund A account, are selected by the same group of persons who make investments generally for defendant, at the same time that other investments are selected for defendant, and in the same manner that other investments are made for defendant. The sole difference is that investments to be allocated to the said separate account, in conformity with Nebraska law, are not includable in applying the limitations provided in section 44–310.02 of R.S. 1943, quoted in paragraph 38 of this Answer. The investments, so allocated, which comprise common stocks, preferred stocks or shares in any management type of investment trust must conform to the criteria established by section 44–309 of R.S. 1943. All other types of investments allocated to the said separate account must conform to all the requirements of Nebraska law, both as to any quantitative, as well as to any qualitative, criteria which may be prescribed for such type of other investments.

41. The choice of the type and number of investments to be allocated to the Flexible Fund A account, made by the Investment Committee of defendant's Board of Directors, is controlled in large measure by the existence of the various contractual guarantees contained in the Annual Premium Flexible Fund Retirement Annuity policy, which are the same type of contractual guarantees offered by defendant in its Annual Premium Deferred Retirement Annuity policy.

Fourth Defense

42. In its business generally, and in its business of writing the Annual Premium Flexible Fund Retirement Annuity policy, defendant is not subject to registration under the 1940 Act, or subject to the control or supervision of the plaintiff, by virtue of the McCarran-Ferguson Insurance Regulation Act, 59 Stat. 33, 15 U.S.C. sections 1011-1015, which leaves regulation of the business of insurance entirely to the states, and denies the power of such regulation to the federal government, including the plaintiff.

43. The provisions of the McCarran-Ferguson Insurance Regulation Act make reference solely to the Sherman Act, the Clayton Act, the Federal Trade Commission Act, the Robinson-Patman Anti-discrimination Act, the National Labor Relations Act, the Fair Labor Standards Act, and the Merchant Marine Act, 1920, and do not refer to the 1933 Act or to the 1940 Act. Neither the 1933 Act nor the 1940 Act relates to the business of insurance.

44. Defendant is engaged solely in the business of insurance under and subject to the laws of the State of Nebraska and of the other states in which defendant is authorized to do business and of the District of Columbia. The laws of Nebraska, including sections 44-101 et seq. of R. S. 1943, provide for the regulation and taxation of defendant's business. By virtue of the McCarran-Ferguson Insurance Regulation Act, therefore, defendant's said business is not amenable to or subject to the provisions of the 1933 Act or of the 1940 Act.

45. Application of the 1933 Act or of the 1940 Act to defendant's business generally or to defendant's business of writing the Annual Premium Flexible Fund Retirement Annuity policy would create a direct conflict between the said federal laws and the laws of Nebraska, and such application would contravene directly the McCarran-Ferguson Insurance Regulation Act, which prohibits any act which would invalidate, impair or supersede the applicable laws of Nebraska which regulate and tax defendant's business.

46. Application of the said federal laws to defendant's said business, in contravention of the McCarran-Ferguson Insurance Regulation Act, would result in treating defendant's business as other than the business of insurance, with the further result that the Nebraska laws under which defendant is incorporated, organized, operated and regulated, and pursuant to which its policies are approved and written, and which regulate and tax defendant's business, would be invalidated, impaired and superseded.

Fifth Defense

47. The Annual Premium Flexible Fund Retirement Annuity policy written by defendant is an annuity, and it is not a "security" within the meaning of section 2(1) of the 1933 Act, 15 U.S.C. section 77b.(1), or within the meaning of section 3(a)(10) of the 1934 Act, 15 U.S.C. 78c.(a)(10), or within the meaning of section 2(a)(35) of the 1940 Act, 15 U.S.C. section 80a-2(a)(35); the said annuity policy written by defendant is specifically exempt from the provisions of the 1933 Act, by virtue of the provisions of section 3(a)(8) of the 1933 Act, 15 U.S.C. section 77c.(a)(8), since said annuity policy is an insurance policy, an annuity contract, and an optional annuity contract, issued by defendant insurance company, which is a corporation subject to the supervision of the Department of Insurance of the State of Nebraska, and defendant incorporates by reference the allegations of paragraphs 30 and 31 of this Answer, with like effect as if herein fully repeated.

48. Exhibit A attached to the Complaint is a specimen copy of defendant's Annual Premium Flexible Fund Retirement Annuity policy. Making the following assumptions: Annuity Income—$6.30; Age at Issue—35; Date of Issue—April 1, 1962; Premium—$100.00 monthly; Age at Maturity—65; Annuity Option—A; said Exhibit A would give the holder thereof, hereafter referred to in this paragraph as "the Annuitant," the following rights and would subject the defendant to the following obligations:

(a) The Annuitant will pay a $100 monthly premium from the date of issue (April 1, 1962) until the Maturity Date 30 years hence (April 1, 1992). On the Maturity Date and each month thereafter, defendant will pay a guaranteed fixed dollar monthly annuity income of $6.30 per $1000 cash value, in accordance with Option A of Table 1.

(b) Said monthly amount of $6.30 per $1000 cash value is guaranteed by defendant, without relation to actual expenses incurred by defendant, and without relation to actual mortality experience, even though that experience may be more adverse to defendant than expected. Defendant agrees to pay to the Annuitant, beginning on Maturity Date, a monthly annuity income in such amount as the then cash value of the policy, as provided in Section 9, will purchase in accordance with Table 1. Table 1 of Exhibit A is the same table utilized by defendant in the Annual Premium Deferred Retirement Annuity policy issued by it.

(c) All amounts of net premiums paid on the policy by the Annuitant to defendant are credited to the Flexible Fund A account, a separate account maintained by defendant in accordance with sections 44–310.06 to 44–310.08 of R. S. Supp. 1961. Net premiums are the following portions of each premium paid by the Annuitant for the respective policy years: first year—50.0 per cent; second to tenth year—90.5 per cent; eleventh year and thereafter—95.0 per cent.

(d) The accumulated value of the policy at the end of any month is the accumulated value as of the end of the previous month, increased by net premiums and multiplied by the Monthly Accumulation Rate as defined in Section 12 of the policy. The Flexible Fund A account constitutes an internal accounting mechanism utilized by defendant for the determination of the said Monthly Accumulation Rate.

(e) At any time prior to the Maturity Date, the policy may be surrendered and defendant will pay the cash value thereof to the Annuitant. The cash value is (1) the amount of accumulated value as computed on the basis of net

premiums and the Monthly Accumulation Rate, or (2) the guaranteed Minimum Cash Value—whichever is higher. The guaranteed Minimum Cash Value is determined by applying a specified per cent figure to the sum of the net premiums which have been paid, as follows:

Years for Which Premiums Paid	Per cent
1	50
2	55
3	60
4	65
5	70
6	75
7	80
8	85
9	90
10 or more	100

After ten years, therefore, the guaranteed Minimum Cash Value equals 100 per cent of the sum of the net premiums which have been paid by the Annuitant to defendant.

(f) If the Annuitant dies before the Maturity Date defendant will pay to the beneficiary, either (1) the amount equal to the cash value of the policy, or (2) the sum of the gross premiums which have been paid—whichever is higher.

49. The guaranteed Minimum Cash Value of the Annual Premium Flexible Fund Retirement Annuity policy, in comparison with the guaranteed cash value of the Annual Premium Deferred Retirement Annuity policy for selected years, assuming, each instance, a $100 monthly premium, is, as follows:

Years Premiums Paid	Annual Premium Flexible Fund Retirement Annuity	Annual Premium Deferred Retirement Annuity
5	$ 3,460.80	$ 5,203.82
10	10,374.00	11,561.48
15	16,074.00	18,749.90
20	21,774.00	26,896.01

50. Defendant's Annual Premium Flexible Fund Retirement Annuity policy provides, among other things, that prior to the Maturity Date the aggregate reserve for the

policy shall be the cash value, increased by such contingency reserve as may be necessary to cover the minimum death benefit guarantee; and provides that after the Maturity Date the reserve shall be based on the 1937 Standard Annuity Table of Mortality, rated down one year for males and six years for females, with interest at two and one-half per cent. Defendant has established, and will maintain, true insurance reserves in connection with Annual Premium Flexible Fund Retirement Annuity policies issued by defendant.

51. Defendant's insurance reserves which are and will be maintained in connection with defendant's Annual Premium Flexible Fund Retirement Annuity policies will be under the direct approval and supervision of the Department of Insurance of the State of Nebraska, and will have to be sufficient to cover defendant's liabilities, in accordance with the contractual guarantees offered by defendant in the said policies, as follows:

(a) The amount of the Minimum Cash Value guaranteed, in excess of the cash value as determined by the accumulation of amounts of net premiums at the Monthly Accumulation Rate as defined in the policy;

(b) The cash value as determined by the accumulation of amounts of net premiums at the Monthly Accumulation Rate as defined in the policy; and

(c) The death benefit guaranteed, consisting of the total of the amounts of gross premiums paid, in excess of the cash value.

52. Because of the guarantees referred to in paragraph 51 of this Answer defendant and its stockholders assume the risk of any decline in the value of defendant's investments allocated to the Flexible Fund A account prior to the Maturity Date of the policy. If the value of defendant's said investments declined to zero, so that the cash value (as defined in subparagraph (b) of paragraph 51 of this Answer) would amount to zero, the annuitant would, nevertheless, have the right to obtain the full amount of the Minimum Cash Value guaranteed. Further, if the value

of defendant's said investments allocated to the Flexible Fund A account should decline to zero, so that the cash value (as defined in subparagraph (b) of paragraph 51 of this Answer) would amount to zero, and the annuitant should die, prior to the Maturity Date, the annuitant's beneficiary would, nevertheless, have the right to obtain the full amount of the death benefit guaranteed which consists of the total amount of gross premiums paid.

Sixth Defense

53.(a) The Flexible Fund A account is not an entity, legal or otherwise, and the said separate account is merely the designation of an internal accounting mechanism utilized by defendant in computing the Monthly Accumulation Rate as defined in the Annual Premium Flexible Fund Retirement Annuity policy, and the said Flexible Fund A account has no existence otherwise.

(b) Said separate account is neither a "person" within the meaning of section 2(a)(27) of the 1940 Act, U.S.C. section 80a–2(a)(27); nor a "company" within the meaning of section 2(a)(8) of the 1940 Act, 15 U.S.C. section 80a–2(a)(8).

(c) Said separate account is not an "issuer" within the meaning of section 2(4) of the 1933 Act, 15 U.S.C. section 77b.(4); or within the meaning of section 2(a)(21) of the 1940 Act, 15 U.S.C. section 80a–2a(21); or within the meaning of section 3(a)(8) of the Securities and Exchange Act of 1934, 15 U.S.C. section 78c.(a)(8). Purchasers of defendant's Annual Premium Flexible Fund Retirement Annuity policy enter into contracts with defendant; they could not, and do not, enter into contracts with the said separate account.

(d) Said separate account is not an "investment company" within the meaning of either section 3(a)(1) or section 3(a)(2) or section 3(a)(3) of the 1940 Act, 15 U.S.C. section 80a–3(a)(1)(2)(3). Even if said separate account were deemed to be an issuer or to be a company, the said separate account would be exempt from regis-

tration under section 3(c)(3) of the 1940 Act, 15 U.S.C. section 80a–3(c)(3), as an "insurance company."

54. Under section 44–310.06 of R. S. Supp. 1961, by virtue of which amounts are allocated by defendant to the said separate account, said amounts are owned by defendant, and defendant cannot be, nor lawfully hold itself out to be, a trustee in respect to such amounts. The holder of defendant's Annual Premium Flexible Fund Retirement Annuity policy, or his designated beneficiary therein, has no interest, direct or indirect, in any of defendant's investments, including defendant's investments which are allocated to the said separate account, Flexible Fund A account. Said holder has only contractual rights against defendant as defined in the said policy.

55. Defendant has established, and will establish, policy reserve liabilities in connection with the Annual Premium Flexible Fund Retirement Annuity policies which have been written and will be written by defendant; the amounts allocated by defendant to the Flexible Fund A account constitute a part of such policy reserve liabilities. These reserves, as well as all of defendant's reserves, are subject to the control of defendant's Board of Directors, and to the supervision, audit, examination, and control of the Department of Insurance of the State of Nebraska.

56. The contractual relationship between defendant and the purchaser of any Annual Premium Flexible Fund Retirement Annuity policy written by defendant is solely that of creditor and debtor, in which the purchaser is the creditor and defendant the debtor. By the contract known as the Annual Premium Flexible Fund Retirement Annuity policy defendant obligates itself, on and after the Maturity Date, to make fixed dollar monthly payments in guaranteed amounts for the life of the annuitant in accordance with the option selected. Prior to the Maturity Date the holder of the Annual Premium Flexible Fund Retirement Annuity policy is guaranteed a cash value of the policy. Defendant's policy reserves maintained in connection with the said

Annual Premium Flexible Fund Retirement Annuity policies represent liabilities of defendant.

57. None of defendant's assets are earmarked for, nor do they otherwise constitute assets allocated to, any reserve accounts. The holders of defendant's Annual Premium Flexible Fund Retirement Annuity policies are solely creditors of defendant and, as such creditors, they have the right to look to the totality of defendant's assets to meet the liabilities to them which have been assumed by defendant in the annuity contracts held by such policyholders.

58. Defendant's aggregate reserves, which are subject to the supervision and control of the Department of Insurance of the State of Nebraska, are an actuarial determination, made in accordance with applicable Nebraska law, of the anticipated obligations of defendant to its policyholders. Defendant's reserves, including the reserves maintained and to be maintained in connection with defendant's Annual Premium Flexible Fund Retirement Annuity policies, are the conventional reserves of an insurance company, and are computed by conventional actuarial methods, and are maintained under the direct supervision and control of the Department of Insurance of the State of Nebraska.

Seventh Defense

59. The contractual provisions of defendant's Annual Premium Flexible Fund Retirement Annuity policy which refer to the Minimum Cash Value guaranteed by defendant are not a "security" within the meaning of section 2(1) of the 1933 Act, 15 U.S.C. section 77b.(1), or within the meaning of section 3(a)(10) of the 1934 Act, 15 U.S.C. section 78c.(a)(10), or within the meaning of section 2(a)(35) of the 1940 Act, 15 U.S.C. section 80a–2(a)(35). Said contractual provisions are but a part of a single integrated contract, and, as such, could not be separately considered a security.

Eighth Defense

60. (a) The holder of defendant's Annual Premium Flexible Fund Retirement Annuity policy is entitled, after the Maturity Date, to a fixed dollar monthly income in a guaranteed amount. The holder has the opportunity, at the Maturity Date, of acquiring a fixed dollar monthly income in an amount even higher than that guaranteed, if the accumulated cash value of the policy on the Maturity Date determined in accordance with the Monthly Accumulation Rate will provide an amount of monthly income higher than that guaranteed.

(b) At all times prior to the Maturity Date defendant bears the risk of loss in connection with the value of the investments allocated to Flexible Fund A account.

(c) Defendant's solvency and its capability of meeting its contractual obligations with regard to the Annual Premium Flexible Fund Retirement Annuity policy, and with regard to its business generally, is ensured by the supervision of the Department of Insurance of the State of Nebraska, and by the investigation of defendant's business made under the Rules and Regulations of the National Association of Insurance Commissioners.

WHEREFORE, defendant demands a final judgment in its favor, dismissing the Complaint and each count thereof, and denying the injunctive relief prayed for in the Complaint.

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MORRIS L. WEISBERG

Dated: November 13, 1962.

TRANSCRIPT OF PROCEEDINGS BEFORE JUDGE CURRAN *

(March 15, 16 and 22, 1965)

* * * * *

[1] APPEARANCES:

WALTER P. NORTH, ESQ., ALAN GORDON, ESQ., ROBERT L. MCCLOSKEY, ESQ., for the Plaintiff.

M. JOSEPH STOUTENBURGH, ESQ., DANIEL J. MCCAULEY, JR., ESQ., MORRIS L. WEISBERG, ESQ., DONALD F. EVANS, ESQ., for the Defendant.

* * * * *

[5] OPENING STATEMENT BY COUNSEL FOR THE PLAINTIFF

Mr. NORTH: May it please the Court, since we have no jury involved in this case and the Court has already been subjected to lengthy pretrial statements and trial briefs, I assume that I may keep my opening statement to a minimum. * * *

* * * * *

[6] Briefly, we expect to demonstrate that the defendant has made use of the mails and other inter-state facilities sufficient to create federal jurisdiction and to invoke the Federal Securities laws, particularly the Securities Act of 1933 and the Investment Company Act of 1940.

They have done this incident to offering, selling, and delivering after sale, a certain form of contract, which will be introduced in evidence, which we expect to establish before the Court are investment contracts and, as such, are securities under the Securities Act of 1933, and that the defendant proposes to continue to sell these contracts by the use of interstate facilities, if not enjoined in the manner prayed for in the complaint.

Next, we expect to prove that, as shown by the contracts

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* Corrected in accordance with stipulation filed May 10, 1965.

themselves and related documents which constitute a part of the contractual arrangement, that the purchasers of this contract are, in fact, investors in a pool of securities, a portfolio of investments, largely equity [7] securities, which pool of securities is sponsored and managed by the defendant, United Benefit Life Insurance Company, it being the expectation of the purchasers of these securities to profit by the trend in the securities markets and the skill of the defendants in buying and selling in and out of those markets, and otherwise managing the fund in their behalf.

Thus, we expect our proof will demonstrate that the defendant has, in fact, created and is now sponsoring and managing an investment fund which is designated as "Flexible Fund Account," or "Flexible Fund A,"—it has various designations—which is a separate and segregated unit apart from all other insurance and annuity operations carried on in the United Benefit, and that that fund in and of itself is an investment company within the meaning of the 1940 Act and is, therefore, subject to registration under that Act, and to the various regulatory provisions set forth in it, but that the defendant has not, in fact, registered under either that Act or the 1933 Act which was mentioned earlier.

Admittedly, these contracts will show, when they are in evidence before the Court, that they have some features which are not strictly and entirely typical securities features, [8] but in that respect they are not materially different from what was before the Supreme Court in the VALIC case and in the Third Circuit in the Prudential case where, again, you were dealing in contracts that had non-securities features to some extent.

As we see it, and we believe this is what the proof will demonstrate, there is only one respect in which this contract differs in any sense that could even approach a material respect from the ones already passed upon in other litigation, and that is what they designate the "guaranteed minimum cash value."

In other words, as we see it, this law suit really centers

around the fact (sic: question) of whether or not that feature is of sufficient significance to lead the Court to reach a different result than has been reached in other cases before, and we expect in that regard to show that this feature is a more or less minimal feature, and it certainly is not the principal consideration which a purchaser seeks to acquire when he buys one of these contracts, its major aspects being of a securities nature and subject to the securities laws which I earlier mentioned.

The COURT: Is the cash value fixed at the time of the purchase of the policy?

[9] Mr. NORTH: No.

Now, are you talking about the—this guaranteed minimum cash value?

The COURT: Yes.

Mr. NORTH: That is dependent upon a sliding scale which, in turn, depends on the number of years the contract has been in effect.

A certain percent of the net payment in each year is guaranteed, but it is on a sliding scale, so you can't determine in advance unless you know what date on which—unless you know the date on which it is to be surrendered for its cash value.

The COURT: You mean if I purchase the policy I don't know what the cash surrender value will be in any given year?

Mr. NORTH: No. I am sorry if I gave that impression. Depending on the year in which you surrender it the cash value can then and there be fixed to the exact dollar by reference to the percentages that are specified in the contract, yes.

The COURT: Now, when is the amount fixed in dollars that I would receive for the rest of my life? Is that fixed at a future date, depending upon the condition of the [10] flexible fund?

Mr. NORTH: That is not fixed until you reach the maturity date, whatever date you, as a contract purchaser, selected on which to retire.

The COURT: How is the amount agreed upon? Does it

depend upon whether the flexible fund has made money or lost money?

Mr. NORTH: It depends on whether the fund has lost money or made money between the time you buy the contract originally and the time you convert it into an annuity at maturity date, subject only to the minimum limitation that no matter what the experience may have been on the securities market as to this particular fund, it can't drop below the so-called guaranteed minimum cash value. That is a floor. Other than that floor, the thing fluctuates the amount you will get——

The COURT: There was no floor in VALIC, was there?

Mr. NORTH: There was no floor in VALIC; that's right.

The COURT: So that the policy holder in this case is guaranteed that he will get back at least what he put in; right?

Mr. NORTH: No, no. The minimum guarantee doesn't [11] approach what he put in.

Now, if the policy runs enough years—the contract runs enough years so that the later years when the guarantee is relatively higher will offset the earlier years when it is low, it will gradually approach something like 90 percent of what you put in, but it never reaches all that you put in, and in the earlier years it is much less than that. Plus the fact, of course, that everything that has been earned on your share in the fund in the meantime is lost, and they bear no part of that risk. The most they are bearing is a proportional share of the risk of the loss of the amount of the initial investment on a net basis. Even then you don't get back whatever is deducted for sales charges, or expenses, or anything of that sort.

The COURT: Suppose I pay a hundred dollars a month for thirty years. At the end of thirty years I want to cash it in; what do I get back? Thirty-six thousand dollars?

Mr. NORTH: No, no. You would get back basically what was represented by the investment experience of your thirty-six thousand dollars minus the sales load that is taken off at the beginning, and minus a monthly charge

taken off every month during the thirty years, but subject to——

The COURT: There is nothing wrong with that, is there?

[12] Mr. NORTH: What?

The COURT: There is nothing wrong with that, is there?

Mr. NORTH: No, no. There is nothing wrong with it.

The COURT: Now, when the maturity date is reached do I understand that the policy holder then decides whether or not he is going to leave it alone and take his annuity, so-called, for the rest of his life in monthly payments?

Mr. NORTH: He makes that decision at maturity date to either purchase an annuity, or take back all of his share in the fund in cash.

The COURT: Suppose he decides to purchase the so-called annuity? How is the monthly amount reached? Does it depend upon the financial condition of the flexible fund?

Mr. NORTH: It depends entirely upon the condition of the flexible fund on the date the maturity date is reached except for this guaranteed minimum.

The COURT: As I understand, the amount the annuitant is to receive in monthly payments for the rest of his life depends upon the financial condition of the flexible fund. In other words, if they have made money, he will get a bigger annuity, and if they lost money he will get a smaller annuity.

Mr. NORTH: That's right.

[13] The COURT: Now, how low can that monthly amount go to. Is there a guarantee on that, or can he wind up with nothing?

Mr. NORTH: No, no. He can't wind up with nothing. There is a guarantee that his share in the fund will equal a certain minimum which, in turn, is bound to purchase a certain amount of annuity based on the annuity tables.

The COURT: That is not VALIC, is it?

Mr. NORTH: It is not VALIC in the sense that it could drop to zero.

The COURT: VALIC could.

Mr. NORTH: That's right.

And as I stated in my opening statement, that is the one thing that we think has to be decided in this case, really, whether this minimum guarantee is of sufficient significance to break this case away from the VALIC doctrine. We think that is the issue in this case.

The COURT: I think so.

Mr. NORTH: And you raise the question, Your Honor, about the payout period.

I am glad to state right at the beginning of the case that since the dollar amount of the annuity does become fixed at maturity date, if he elects to take an annuity, we [14] are not claiming the federal securities laws have any application to the bona fide fixed-dollar annuity policy which he receives on that date and has for the rest of his life.

We are saying that it is during the payin period that the contract holder is engaged in investing his money through the medium of a pool managed by Prudential (sic: United Benefit). And it is at that stage that the federal securities laws are applicable.

That is another difference, perhaps, because, as I remember it, both in VALIC and in Prudential, even after the maturity date the amount of money the annuitants received in any one month for the rest of his life still continued to fluctuate with the market experience of the fund in which he had bought interest.

The COURT: But once the amount is fixed at maturity date, even if the flexible fund went bankrupt, the insurance company would still have to pay the annuitant a certain amount of money until he died.

Mr. NORTH: That annuitant has absolutely no interest in the flexible fund once he has received his true annuity, and then he is no longer in the flexible fund at all.

[15] The COURT: You say the amount that he is to receive, if he buys the alleged annuity, that amount depends upon the financial position of the flexible fund; right?

Mr. NORTH: Depends entirely on that, subject only to this minimum below which it cannot go no matter how

poorly the market performs in the meantime; yes, sir, that is correct.

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OPENING STATEMENT BY COUNSEL FOR THE DEFENDANT

Mr. McCAULEY:

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[19] . . . And our position is that this is nothing more than a product developed by a company looking toward the VALIC case, trying to comply with what the Supreme Court said in the VALIC case, and at the same time doing nothing more than extending the opportunities of [20] its policy holders to participate in the investment experience of the company with respect to these particular net premiums, and that this so-called "shot at the alley" (sic) doesn't derogate from the basic undertaking of the company to pay from the beginning guaranteed fixed dollars, just exactly and precisely the type of investment risk that Mr. Justice Douglas said did not occur and did not take place and was not a part of the VALIC situation—all of those things are here. He doesn't equate, he doesn't announce, and there is nothing in the opinion that indicates that you have to take the quality of the investment risk and measure it, or the quantity of the investment risk and measure it.

He says if a company takes some investment risk, that is insurance. We take that risk, and that is the defendant's position.

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[25] The Deputy CLERK: Plaintiff's Exhibit Number 7 for identification.

(Plaintiff's Exhibit Number 7 was marked for identification. Specimen policy of the deferred retirement annuity.)

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[26] Mr. McCauley: I point out to the Court that this policy, which is Plaintiff's Exhibit Number 7, is the deferred retirement annuity today being issued by this company, and is a 1964 series. We will be offering examples of the deferred annuity issued at the time the law suit was instituted.

Mr. North: Your Honor, we have quite a few other exhibits, and some questions and answers that we want to offer in evidence a little later, but I think we have already offered [27] all that is basically required to precede the testimony of our principal expert witness who is here under rather adverse circumstances from the standpoint of health, and I would like to call him at this time even though it may be a little out of order, and I would like to have the examination conducted by Mr. Alan Gordon to whom I referred earlier.

Mr. McCauley: Is Professor Patterson in the room?

Mr. North: Yes.

Mr. McCauley: I would ask that we either have a conference at sidebar or that we ask Professor Patterson to leave the room. I would like to have an offer of proof, and I would like to see what the offer of proof is and, perhaps, make argument with respect to his testimony.

The Court: Very well. He may be excused.

(Witness excused from the courtroom.)

Mr. McCauley: I have noticed that Professor Patterson is not in the courtroom, and the defendant requests that the plaintiff submit an offer of proof with respect to the testimony to be adduced from or through this witness.

The Court: Very well.

Mr. Gordon: May it please the Court, the plaintiff intends to show through the testimony of Professor Patterson, first, that he is an established authority in the fields of [28] insurance concepts, practices, understandings and usage of the trade in industry, understanding technical terms used in the trade in industry. And then we expect

to show substantively that it is his opinion that the arrangements which are spelled out in the defendant's documents styled the flexible fund retirement annuity would not be generally recognized or regarded in the insurance trade as an annuity contract as that term and that concept has been traditionally understood and used in the industry.

He will also testify with respect to the extent to which there are elements of insurance in the totality of the arrangements and to the extent to which elements of the arrangements are not properly understood, as accepted in the trade of insurance, as insurance elements.

And then, finally, he will offer an opinion in regard to the character of the entirety of the arrangement as to whether in the understanding and usage of the insurance business this would be recognized as an annuity contract or deferred annuity contract or participating deferred annuity contract.

It is for that purpose we offer his testimony, sir.

Mr. McCauley: It is the position of the defendant, Your Honor, that the opinions of Professor Patterson, or anyone [29] else, with respect to what has traditionally been understood to be insurance or annuities is entirely immaterial and irrelevant to the determination of the issues in this case.

Mr. Justice Douglas said that there was no intention—and I am paraphrasing—to freeze the concept of annuities as of the time of the enactment of the 1933 Act, and in the dissenting opinion Mr. Justice Harlan said the same thing.

If there was anything, and I suppose the only thing, that the nine Justices who heard that case agreed on, was that you couldn't freeze the concept of annuity to a particular period of time, to wit, the date of the enactment of this statute.

This Commission is now back here, in 1965, after having tried that case, I believe, in 1957, trying to establish the same things through this witness that that Court, the

Supreme Court, decided were not, as a matter of law, to be considered controlling on that Court.

Consequently, we think that any testimony dealing with what traditionally may be conceived to be insurance or an annuity is absolutely irrelevant and immaterial under the tests laid down in the VALIC case.

It is that case, and the opinion in that case, which sets forth the guidelines.

Secondly, any opinion to be given by this witness on [30] the character of the arrangement usurps the function of the Court. It is absolutely improper. Consequently, we do not think on the basis of the offer of proof that has been submitted that the testimony, as they indicate it will be adduced, is relevant and material and necessary to a determination of the issues in this case by Your Honor.

Judge Wilkins, who sat in—I don't know if it was the same chair, but figuratively the same chair—listened for two weeks to experts on both sides, and wrapped it all up in his opinion by saying it was all very interesting, but—and then he went to the four corners of the document, and he went to his general experience, and he made a determination, and throughout that case in the Court of Appeals and, again, in the Supreme Court, I don't think there is a scintilla of a sentence that refers to any of the testimony of all of these so-called experts.

The test in the matter before you with respect to the testimony of this witness is that it is irrelevant what traditionally was or was not, in his opinion, insurance or annuity. These concepts are not frozen, they are not fixed.

Mr. GORDON: May it please the Court, it seems to us that the defendant is seeking to again argue to Your Honor the very issue that was raised by the defendant in their motion for [30-a] summary judgment when they took the position that there were no matters of fact requiring a trial, and it was the plaintiff's view that there were facts in dispute—these very facts. And, of course, the motion was denied, and, basically, for the same reasons and on

the basis of the same arguments which we made in that context we seek to have Professor Patterson's testimony adduced today.

The COURT: Objection is sustained. You can prove your case without the opinion of an expert. I will decide what it is.

* * * * *

[31] Mr. NORTH: May it please the Court, I appreciate the Court's offering to give us a brief recess, because the ruling did come as somewhat of a surprise to us. A great deal of work and effort has gone into the preparation of Professor Patterson to testify.

The conclusion we come up with, if the Court will permit us to do so, is that, in view of the advanced age and precarious condition of Professor Patterson's health, and the possibility of course, that this case might have to be retried, though we all hope it will not—we would like to at least preserve his testimony in the form of a special record. It will not be a lengthy one. As a matter of fact, we have exactly twenty questions, and twenty answers of no great length, and we would like to make a record of them.

In the meantime, I would like to hand up the original of the letter from the Professor's doctor, which shows the state of his health. A copy of this was brought here—

The COURT: I do not doubt that his health is bad. Do you want me to see the twenty questions?

Mr. MCCAULEY: I would like to state an objection to it. We endeavored to take Professor Patterson's testimony at a time when, so far as we knew, he was in good health, and they objected to it vigorously, and we were turned down [32] by Judge Youngdahl, and I object to any effort on their part now at this stage of the trial to, in these proceedings, try to put in this record or to preserve any testimony with respect to this witness. They are hoist on their petard on their objection to my taking his deposition when I wanted to.

Mr. NORTH: Your Honor, I think it is well established,

and that is the basis on which Judge Youngdahl ruled, that neither side is entitled to examine for purposes of discovery expert witnesses on the other side of a case.

That is why we objected at that time, and, of course, none of us foresaw what has happened since. And I do not think that the fact that we did not want them in advance of trial to be able to brain pick our expert witness, should have anything to do with whether we are entitled to make a special record of his testimony here in Court today.

The COURT: I will sustain the objection.

Mr. NORTH: I would still like to hand up the letter that was addressed to the Court on this subject.

The COURT: You mean about his physical condition?

Mr. NORTH: Right.

(Handed.)

By mistake, we brought your Honor down a carbon [33] copy of that a few days ago, whereas the original should have been brought to you. It is really your letter, not ours.

The COURT: It may be filed.

Mr. NORTH: Thank you.

Deputy CLERK: Plaintiff's No. 8–A, 8–B and 8–C for identification, comprising annual statements.

(Annual statments marked for identification Plaintiff exhibits 8–A, B and C.)

Mr. NORTH: Your Honor, I identify exhibits 8–A, B and C as being respectively the annual statement as to United Benefit Life Insurance Co., addressed to the Insurance Department of the State of Nebraska, in relation to United Benefit operations generally for the year 1963; the annual statement—I am talking now about "B," instead of "A"—of the separate account business, which is this special flexible annuity fund; and 8–C, the schedules of the various investments which are reflected in the annual reports, all to the State of Nebraska.

Mr. MCCAULEY: I have no objection. I just wanted to

point out that these go to every state in which the company does business, and the document that is going into evidence is not specifically addressed to the State of Nebraska, although a copy went there.

The COURT: It may be admitted.

* * * * * *

[39] Mr. NORTH: Next, your Honor, under the doctrine that long-standing administrative practice of an agency that administers a federal statute, is entitled to considerable weight as to the true nature of what it does in respect to matters within its jurisdiction, I would like to offer four very early registration statements under the 1940 Act, by funds which were very comparable, we say, to this unincorporated pool of securities that we are dealing with in the present case.

[40] These are merely instances of administrative practice from the early days of the adoption of the act.

Deputy CLERK: Plaintiff's exhibit 12-A, 12-B, 12-C and 12-D for identification.

(Plaintiff's Exhibits 12-A, 12-B, 12-C and 12-D, marked for identification.)

Mr. NORTH: In each instance, your Honor, the documents which we have had certified by the secretary of the Commission consists of the notification of registration filed by the fund, complete, including all information submitted to describe the nature of the fund which is there-by being offered for registration.

The COURT: Filed by whom?

Mr. NORTH: The first one, 12-A, is the registration of the Alexander Fund.

The COURT: The what?

I did not hear what you said, the what?

Mr. NORTH: The Alexander Fund, is the name of it.

The COURT: Filed by defendant corporation?

Mr. NORTH: No, no.

The COURT: Filed by whom?

Mr. NORTH: Filed by the applicant for registration. Filed by the Alexander Fund in this case.

The COURT: What has that got to do with this case?

[41] Mr. NORTH: It is offered solely to show, your Honor, a longstanding practice of accepting for registration under the 1940 Act pools of—liquid pools of securities which are organized on a basis other than an incorporation or a separate legal entity in the ordinary sense of the word, which is the very contention we are up against here, that this flexible fund is not subject to registration under the 1940 Act because it is merely a part of United Benefit Corporation.

The COURT: What does this prove, these four exhibits? Because somebody else thought it was?

Mr. NORTH: This shows, your Honor, that unincorporated funds have been treated as investment companies for purposes of the 1940 Act since the early days when the Act was first adopted—I think this Alexander Fund one is dated 1940 or maybe 1941.

The COURT: Treated by whom?

Mr. NORTH: By the persons who operate the funds, and by the Securities and Exchange Commission, as the agency which administers the law.

The COURT: Do you object?

Mr. MCCAULEY: I object.

The COURT: The objection is sustained.

Mr. NORTH: Your Honor, the identification [42] I stated on the record related to 12–A only. I would like just for purposes of identification, to note that 12–B is a similar statement filed with the SEC by Securities Fund in April of 1941 and that 12–C is a similar statement filed by Mutual Investment Fund on October 24, 1940, and that 12–D is a similar statement of Amalgamated Investment Company filed with the Commission November 1, 1940.

I assume that the objection and the ruling apply to all four of them.

The COURT: Yes.

Deputy CLERK: Plaintiff exhibit 13 for identification.

(Plaintiff exhibit 13 is marked for identification.)

Mr. NORTH: I offer exhibit 13 as being a photostatic copy of a letter dated February 3, 1964 from A. R. Gustafson, Vice President and Actuary of the Company, United Benefit, which was submitted to us as being a copy of what they designate their annual report for the holders of this contract.

I offer it for that purpose.

Mr. MCCAULEY: No objection, your Honor. This was sent out pursuant to the terms of the contract.

The COURT: That may be admitted.

* * * * *

[43] Deputy CLERK: Plaintiff 14 for identification.

(Plaintiff exhibit 14 marked for identification.)

Mr. NORTH: Your Honor, I offer exhibit 14 as being a sample copy of the manner in which the so-called monthly accumulation rate is determined from month to month, as this flexible fund is operated. This particular [44] one is for the month ending December 31, 1963, but I believe it was cited to us as being typical of the manner in which that same thing is determined from month to month as these contracts go along.

Mr. MCCAULEY: With the understanding, your Honor, that these are the internal working papers of the company and they are not generally distributed to policy-holders, we would have no objection to them.

The COURT: They are received.

* * * * *

[58] ARNOLD PINES, a witness called by counsel for the plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. McCLOSKEY:

Q. State your name and address for the record, will you, please? A. My name is J. Arnold Pines. I reside at 1405 Dillston Road, Silver Spring, Maryland.

Q. And your present position? A. Associate Director in the Division of Corporate Regulation of the Securities and Exchange Commission.

* * * * *

[59] By Mr. McCLOSKEY:

Q. Tell us your last position immediately prior to becoming associate director. A. I was chief financial analyst in the Division of Corporate regulation in the SEC.

Q. How long had you held that position? A. Since March, 1959.

Q. Prior to that what was your position? A. For approximately three years I was also Chief Financial Analyst, but it related only to the activities of the Division under two of the three statutes with which it is interested, namely, the Public Utility Holding Company Act of 1935, and Chapter 10 of the Bankruptcy Act. But in 1959 my duties as chief financial analyst became associated as well with the Investment Company Act of 1940.

Q. Do you hold any professional positions? A. Yes, I am a certified public accountant in the State of New Jersey, and I am a member of the American [60] Institute of Certified Public Accountants, as well as a member of the American Finance Association.

Q. Your duties in the Commission as a financial analyst, would you please briefly summarize what they are? A. I was the person chiefly responsible for the technical direction and development of matters of corporate finance and

accounting under the three statutes which I have named.

All the financial analysts and the accountants were responsible to me in connection with any matters having to do with corporate finance.

Q. Mr. Pines, I direct your attention to what has been marked as Plaintiff exhibit 16-A through 16-E and I ask you if you have ever seen these before? A. Yes, I have.

Q. Can you tell me what they are? A. They are photocopies of studies submitted to me and other members of the SEC staff on January 17, 1964 by representatives of United Benefit Life Insurance Company.

Q. Do you remember the persons who submitted them to you, the names of any of those persons? A. As I recall, they were Messrs. McCauley, Weisberg——

[61] Mr. McCauley: I will concede, that in an effort to get this case on trial after such a long delay—we decided to submit these things to the Commission and they were delivered.

Mr. McCloskey: Thank you. We will accept that.

By Mr. McCloskey:

Q. I show you plaintiff exhibit 17 for identification and ask you if you can identify that. A. Yes.

Q. What is it? A. This is a part of the material submitted to me and staff members, also on January 17, 1964, by the same persons.

Q. Mr. Pines, what did you do subsequently with these documents? A. I studied these documents at the request of Mr. Solomon Freedman who was then an associate director in the Division of Corporate Regulation, with a view to understanding and analyzing what the relationship was, if any, between the premiums paid in by contract purchasers and the guaranteed minimum cash value percents set out in Section 9 of the Flexible Fund annuity contract.

Mr. McCloskey: At this time, I offer plaintiff exhibit 17 into evidence.

[62] Mr. McCauley: I object to it, your Honor.

The COURT: You furnished it to them.

Mr. McCAULEY: We furnished that to them, reserving at that time, the right to object on the grounds of relevancy.

There surely is no question about it, that this material was furnished, but how it is conceivable that, because this company looked and made studies to make a determination of what historically would have occurred with respect to so-called market action, what the relevancy or materiality is to determining whether, in the insurance sense, under the Valic case, this company has assumed the risk, I, for the life of me, cannot understand.

Because these studies deal with general indices. The mere fact that indices go up—for example, the Dow Jones closed a little over 900 on Friday, but there are people who lost money in the market.

And the mere fact that we look at indices, does not determine whether or not in the sense set out in the Valic case, we take a risk.

I think there is no question about it that the Courts generally would take judicial notice of the fact that, if you invest in securities, there is risk. And the mere fact that over a period of time general indices have [63] indicated an uptrend, does not mean that (a) it is going to continue; or (b) that you should have participated in it.

So that our problems are not what happened in the past but what is going to happen in the future, and certainly no one is going to be able to predict that; and most of all, even if I attempted to predict it, this agency is the last one that would let me put it in a document and circulate it.

As they would not permit Valic, or Ealic to circulate it.

The COURT: It may be admitted.

Deputy CLERK: Plaintiff exhibit 17 marked into evidence.

(Plaintiff exhibit 17 marked in evidence:)

By Mr. McCLOSKEY:

Q. Can you tell us, briefly, what is contained in these large books that you have before you—first of all, how many studies are there? A. There are four studies and

the one which is designated as Plaintiff exhibit 16–E and representing United Benefit's study No. 4, actually has 5 sub-studies in it.

Q. Did there seem to be an order to these studies? [64] A. Yes. Study No. 1, identified here as Plaintiff's Exhibit No. 16–B—pardon me.

Study No. 1, Part 1, identified as Plaintiff's Exhibit 16–A, is an annual premium study covering the 80-year period from 1880 through 1959, and for decreasing, consecutive decreasing time periods, as 1881 through 1959, 1882, through 1959, and so forth, down to the single year 1959.

Q. What information is shown on that briefly, without—what kind of information can you read from the study? A. That study shows the net premium after deduction of load invested each year by a hypothetical contract purchaser in a hypothetical fund investing in a pool of securities governed in its market action by a selected index of common stock prices and yields.

Q. What is the next study? A. The next study identified as Plaintiff's exhibit 16–B, is also Study No. 1, but Part 2, and it is different in that rather than being based upon an annual premium payment, it is based upon a single initial premium, and it covers the same periods of years as the one to which I have just referred.

Q. And the next study? A. The next study identified as plaintiff's Exhibit 16–C, is Study No. 2, and is a monthly premium study covering [65] the years 1928 through 1960, by months, and then consecutively decreasing time periods as 1929 through 1960, 1930 through 1960, et cetera, down to and including the single year 1960.

Q. And what information can be read from this study? A. The same general type of information can be read from this as from the prior studies, namely, the rate of accumulation of a fund, invested in an index of common stocks with yields on the portfolio securities, identical with that of the selected index, and showing as the other studies the cash value of the fund at the end of the respective periods.

Here months, and in the previous ones years.

Q. Tell us about the next study, please. A. The next study, identified as Plaintiff's exhibit 16-D, is also a monthly premium study, but it encompasses a different time period.

It covers the period 1937 through 1961 and, again, decreasing, consecutively decreasing time periods as 1938 through 1961–1939 through 1961 and so forth down to and including the single year 1961.

The type of information shown here in these electronically prepared sheets is generally the same as that shown in the other studies.

Q. That is, it is a study of the action of a [66] hypothetical fund? A. Of a hypothetical fund invested in a pool of common stocks behaving in the market in accordance with a selected index of common stocks.

Q. And will you please tell us what the last study that you have there in your hands is. A. The last study, identified as Plaintiff's exhibit 16-E, is what I have referred to as Study No. 4. It consists of—unlike the other studies—manually prepared accounting work sheets and is based upon what I would consider to be five sub-studies from the material submitted to us by the defendant's representatives.

Q. This is back-up material, then. I will show you exhibit 17, and refer you to the page in the center thereof which is marked—I notice the number on the page is on the back. Will you tell us where that number was derived? A. In plaintiff exhibit 17 the pages did not have numbers on the face of them, and I have directed my secretary to number them on the back so as not to deface the front of the pages.

Mr. McCloskey: If your Honor please, we would like to refer to those numbers, there being no other numbering system available for this 23-page document.

[67] If it will be all right with you, we will use those numbers on the back of the pages.

The Court: All right.

By Mr. McCLOSKEY:

Q. Referring now to page 9 of 23 pages——

The COURT: What's that?

Mr. McCLOSKEY: Page 9, your Honor. It is numbered in the upper left, and it would be the face side of that.

The COURT: I see. I have it.

[68] By Mr. McCLOSKEY:

Q. With reference to this page, you will see "1–A" up in the righthand corner, and will you please tell us what that means, Mr. Pines? A. That number appeared on this sheet when it was given to me, and I have, therefore, in my study of the company's studies, treated that as sub-study "1–A."

Q. Will you please tell us what the chart on this page depicts as relates to the material which you examined? A. The chart on this page 9 shows the increases or decreases in terms of percentages in the market price of the Moody's Index of 125 Industrial Common stocks from one year to the next, the period being 1935 through 1944.

Q. Moving on, then, to what would be page 11, the front side of page 11, I see a chart at that point in the study. Do you see it? A. Yes.

Q. Can you please tell us first of all, what this chart depicts—what are these top lines, what do they appear to be? A. Those figures are the index prices of Moody's 125 industrial common stocks for the years indicated.

[69] I should point out that, as I understand these figures, the term "market entry" and the term "market term value" presumably meaning market terminal value, representing the average prices in the year for the Moody's 125 Industrial Commons, except that they are delayed one year. The market terminal value, for example of 42.40 shown as the ending figure for the year 1935, is actually an average of 12 monthend-index prices for 1936 and treated as the end of 1935, in that procedure and that procedure applies throughout these remaining years.

Q. The next figure directly below the 42.40 that you

showed, represents what? A. That is the percent of increase or decrease here shown, appreciation or depreciation, for example, the difference between 30.09 and 40.40, or 12.31 points represent an appreciation in the market price of the index of 40.9 per cent.

Q. The next figure next to that in parentheses? A. 0.9 per cent.

Q. Right. A. That is a depreciation from 42.40 to 42.04.

Q. Directing your attention to the center of the page there is a large block of numbers. It seems to be some sort of a graph or table. A. Yes.

[70] Q. And to the far left it says "Investment Distribution Stocks and Bonds."

Will you please tell me what this chart represents? A. This big block on this page 11 represents the results of applying varying assumptions as to how the accumulated net premium will be invested as between common stocks and bonds.

Mr. McCauley: Well, if your Honor please, now I have not interrupted up to this point, but this is either obvious from the paper, or we told them—I do not remember telling them—it just seems to be obvious from the paper.

Now, if we are going to go over all these, pointing out these things, it is perfectly clear, I think, everything he has said, and everything he has explained, right on the face of the paper.

The Court: I would think the exhibit would speak for itself.

Mr. McCauley: Yes.

Mr. McCloskey: We are attempting to explain. To our mind, your Honor; it seemed to me that there was quite a mass of figures without too much designation as to what they meant.

That is what the function of Mr. Pines is here, to show—to the extent that they are related to the [71] back-up material and to what these numbers represent.

They are just numbers unless they are related to the various different items in the studies.

The Court: All right. Go ahead.

The WITNESS: For example, in the first line, representing 100 per cent stock investment, and nothing in bonds, at the end of 1935 there is a figure of 141.98.

That simply means that the cash value of the fund at that date would have equaled 141.98 per cent of the net premium invested by the fund.

By Mr. McCLOSKEY:

Q. Mr. Pines, I notice that as you run down that column, the figure changes. Will you explain that change and what it means? A. Yes. As the proportion of the funds, moneys, are increasingly invested in bonds, you will note that the per cent of appreciation tends to decline, and conversely, as the percent invested in stocks increases, the percent of appreciation tends likewise to increase.

On the other hand, where there is a drop in the market, as, for example, take the year 1937, 100 per cent investment of the moneys of this fund in stocks results in that year in an 87.92 per cent relationship between cash [72] value and accumulated net premium.

That is, there is a deficiency. But, as you run your eye down that column, you will note that, as the per cent of moneys invested in bonds increases down to a maximum of 70 per cent of the moneys invested in bonds, the ratio of cash value to accumulated net premium increases; thereby indicating that the market swings from highs to lows find greatest emphasis in the situations where moneys are invested in stocks, whereas when moneys are invested in bonds, it tends to have a cushioning effect upon the, what otherwise would be, wide swing in the market.

Mr. McCAULEY: I object to the statement of his opinion about the cushioning effect.

The COURT: Sustained.

By Mr. McCLOSKEY:

Q. Mr. Pines, I request you to turn to page 20 of this 23-page document. There is a chart on page 20, on the face side of page 20, and in the upper righthand corner there

is a Roman numeral V. Will you please tell us what that Roman Numeral refers to first? A. That number appeared on this sheet when it was given to me, and I have treated that sheet, as well as the three [73] remaining sheets, as being sub-study V of the Company's study No. 4.

Q. Will you tell us what this chart represents? A. Yes, this chart represents the maximum amounts of decline in the market prices of the index of Moody's 125 Industrial Commons, for the period 1933 through 1960, although the heading on this says, "1929 through 1960."

Mr. McCauley: I do not understand the comment, your Honor.

The Court: He says the heading says "1929 through 1960." But the table shows the year 1937 to 1947.

By Mr. McCloskey:

Q. Would you explain your last comment—does that relate to some of the back-up material that you have there? A. Yes, it does. The company excluded from its consideration for the purposes of this chart the period 1929 through 1932.

There is then left the period 1933 through 1960.

On the basis of an examination of that period, 1933 through 1960, the company computed the maximum per cent of decline from high to low, for a one-year period within that span of years, 1933 to 1960, the maximum per cent of decline for any two-year period, not necessarily [74] coinciding with that same one-year period, also from 1933 to 1960, and so on down until the point where they computed the maximum per cent of decline for a ten-year period, namely, 1937 through 1947, as it worked out to be.

Q. And does this chart represent the worst periods, the worst drop periods, 1, 2, 3, 4, 5 year, et cetera? A. Yes.

Q. During that entire period? A. Yes. Those per cents of decline shown in the last column to the right represent the worst drop in the averages, namely, the Moody's 125 Industrial Common Stock Index, for these one-year, two-

year, three-year, et cetera, periods down to and including the ten-year period.

Q. Will you tell us where these materials derive from? Is there something else in the study? A. Yes. This is—these figures can be verified by reference to Sheet No. 8 in that same group of sheets.

Q. I ask you to turn to the following page, No. 21. Will you tell us then what these charts represent on 21? A. On page 21 the company carried forward the label "Worst drop in Averages over the Period," because they were confining their inquiry at this point to these [75] same time periods of one year, two years and so forth.

They then computed what the cash value of the fund would be if invested in Moody's Index—rather, let me put it this way:

They then computed what the cash value of a fund would be if the market experience of the fund coincided with these maximum per cents of decline, and if it were further assumed there would be a 3 per cent dividend yield on the cost of the securities purchased by such a hypothetical fund.

The figures supporting the second column of the upper half of page 21 appear in the next sheet 22, marked up in the corner by the company as exhibit "X"—shows on Exhibit X, for example, taking the end of a five-year period, that the cash value of a fund which experiences the worst drop in averages for a five-year period, would be equal to 71.5 per cent of the accumulated net premium.

That figure of 71.5 percent is brought forward on to this page 21 and shows up on the line designated "Five-Year."

Q. What assumption was made with respect to this fund—in what kind of a portfolio was this fund to be invested? A. It was assumed that this fund would be totally [76] invested in common stocks and no other securities.

Q. I see this study, page 21. This is the document as it was furnished to you by the Company? A. Yes, sir.

Q. And the headings on that page are the Company's headings and not yours? A. Right. I did not mark these exhibits in any way, no, sir.

Q. Mr. Pines, are you familiar with the terms of the policy, Flexible Fund Contract which is in evidence here? A. I am generally familiar with various of the provisions.

Q. With respect to the minimum guarantees which are contained, or stated in that policy, are you familiar with those? A. Yes.

Q. Have you examined them with respect to the suggested guarantee on page 21 of this exhibit? A. Yes.

Q. Is there any difference? A. They are identical.

* * * * * *

[77] The WITNESS: When I said that the guaranteed minimum cash value per-cents set out in the Flexible Fund Annuity are identical with those shown with these suggested guaranteed percents shown on page 21, I had reference to the upper half of page 21.

By Mr. MCCLOSKEY:

Q. What is the difference between upper half and lower half on page 21? A. The upper half is based upon an annual premium payment by the contract holder, and the lower half is based upon a single premium payment by a contract holder.

* * * * * *

[81] Mr. MCCAULEY: If Your Honor please, Mr. North had offered certain of our responses to requests for admissions, and responses to a supplemental request for admission, and I said that we would review them, and I would like to make some statement on the record with respect to some of them.

In the request for admission, Number 1, in our view that must be read in light of the stipulation Number 1, which is Plaintiff's Exhibit Number 1 dated December 23. We have nothing to add on Numbers 2, 3, or 8.

In Number 24 we incorporated the response to Number 23. Number 24 begins with the words, "On the basis of studies [82] made by it . . ."

There were no studies made by the defendant other than those which have been offered here and admitted. Those studies do not really—there is nothing in those studies that deals with the statement and the request for Number 24, and there has been, in our view, no admission of that and no admission of Number 24.

Number 27—28, excuse me—27, 31 and 34—we have no further comment on those.

With respect to Number 40, I should like to point out, so that it will be clear, that this request speaks as of December 31, 1962, and a reference to any particular contract, and if you go back to the time when we first wrote these contracts—I think it must be read in the light of the fact that the guaranteed minimum cash values do increase, so that as of the period of ten years the guarantee is at one hundred percent, and the figures here do not necessarily reflect what would happen throughout the term of the contract.

Number 44, we have no further comment.

Number 45, we deny the truth of the matter as stated, and then admitted as follows:

"The defendant admits that following extended discussions based on such studies it was concluded [83] that defendant would undertake the various guarantees made by defendant in the APFFRA policy."

And we would like to urge and reserve the fact that this should not preclude us from offering testimony with respect to these guarantees.

What the defendant, in effect, was saying was the discussions were based on the studies. The conclusions, it is our position, were based on judgments made by the management and the board of directors of the company.

49 and 50, we have no further comment.

* * * * *

[85] The Court: Mr. North, I would like to ask a couple of questions.

Mr. NORTH: Yes, Your Honor.

The COURT: I have before me Plaintiff's Exhibit Number 2, which is a sample policy. At the time the policy holder takes out this policy there is fixed the cash surrender values of the policy at the ends of certain years. For instance, let's say at the end of six years, premiums paid for in six years, if you want to cash the policy in you get seventy-five percent of what you put in; is that correct?

Mr. NORTH: I think it is seventy-five percent of the net premiums.

[86] The COURT: I know, but——

Mr. NORTH: Not seventy-five percent of what you actually paid in.

The COURT: But it is fixed as of the time you take the policy.

Mr. NORTH: The minimum guarantee is fixed; correct.

The COURT: Now, let me ask you: if the flexible fund makes money during those six years, does that increase the percent that the policy holder will receive?

Mr. NORTH: Definitely.

The COURT: Now, if the flexible fund loses money, the policy holder would still get seventy-five percent net; right?

Mr. NORTH: Yes. Those figures——

The COURT: The policy holder doesn't lose.

Mr. NORTH: He doesn't lose beyond what he has already lost when you get to those figures.

The COURT: That is what I am talking about.

Mr. NORTH: That's right. You are correct, Your Honor.

The COURT: Now, at the maturity date I decide that I want to purchase this so-called annuity whereby I will receive a certain sum of money monthly for the rest of my life.

[87] At the time I take the annuity that lump sum is fixed; right?

Mr. NORTH: That is correct.

The COURT: Now, if the flexible fund makes money, I get a bigger monthly payment; correct?

Mr. NORTH: Yes, sir.

The COURT: If it loses money, I still get the monthly

payment that is agreed upon at the time I take out the annuity; I don't lose.

Mr. NORTH: You don't lose below the minimum guarantee; correct.

The COURT: So that in this policy the risk is upon the insurance company.

Mr. NORTH: The risk is upon the insurance company to the extent of its minimum guarantee.

The COURT: All right.

* * * * *

RULING OF THE COURT

[94] The COURT: The Supreme Court in VALIC says that the difficulty is that absent some guarantee of fixed income the variable annuity places all the investment risk on the annuitant and none on the company. The holder gets only a pro rata share of what the portfolio of equity interests reflects, which, says the Supreme Court, may be a lot, a little, or nothing.

VALIC also says, in referring to the policy in VALIC, that the companies that issue these annuities take the risk of failure, but they guarantee nothing to the annuitant except an interest in a portfolio of common stocks or other equities, an interest that has a ceiling but no floor.

VALIC also says that in hard reality the issuer of a variable annuity that has no element of a fixed return assumes [95] no true risk in the insurance sense.

We deal with a more conventional concept of risk-bearing when we speak of insurance, for in common understanding insurance involves a guarantee that at least some fraction of the benefits will be payable in fixed amounts.

In this case under the FFA policy the defendant insurance company guarantees to the annuitant a fixed dollar equal monthly retirement income after the maturity date is reached, which income cannot be outlived.

The evidence presented by the Government, including the admissions made by plaintiff, satisfies this Court that the FFA policy is not a security. The guaranteed minimum

cash value of the FFA policy provides a guaranteed basic fixed dollar monthly equal retirement income, which income cannot be outlived, as I have stated, by the annuitant.

I hold, therefore, that the FFA policy is, therefore, an insurance product within the interpretation of VALIC, and the motion to dismiss is granted.

• • • • •

PLAINTIFF'S EXHIBIT No. 1

[Title omitted]

STIPULATION

It is hereby Stipulated and Agreed as of this 23rd day of December, 1964, among the undersigned counsel for the parties, as follows:

1. Interrogatories numbered 1 to 8 included in Appendix A attached to this Stipulation shall be deemed to have been filed with the Clerk of the Court, and served by the plaintiff upon the defendant in accordance with Federal Rule of Civil Procedure 33.

2. The answers to interrogatories number 1 to 8 included in Appendix A attached to this Stipulation shall be deemed to have been filed with the Clerk of the Court, and served by the defendant upon the plaintiff in accordance with Federal Rule of Civil Procedure 33, except that the defendant does not waive its right to object to the use by the plaintiff of the answers (or any parts thereof) upon any ground including the ground that the answers (or any parts thereof) are irrelevant.

/s/ WALTER P. NORTH,
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Appendix A

1. *Interrogatory:*

What steps are taken by the defendant to offer to the public and to place what the defendant designates as an FFA [Flexible Fund Annuity] "policy" in the possession of the owner thereof?

Answer: The defendant makes the FFA policy available only through those of its General Agents and Soliciting Agents who meet the standards established by the defendant as to (a) the dollar volume of the Agent's production of life insurance, and (b) the Agent's attendance at, and successful completion, of a course of study dealing with the FFA policy.

Agents who successfully complete the course of study are furnished with visual aid "sales" materials, and thereafter interview prospective policyholders. The visual aid materials are furnished to the Agent so that he will have explanatory materials available in discussing the FFA policy with a prospect. At the present time Agents are permitted to discuss the FFA policy with prospects in the States of Nebraska, Colorado, Utah and Montana.

The applicant is given a copy of an explanatory brochure generally describing the terms of the FFA policy. (A copy of this brochure was earlier furnished to the plaintiff and is attached to the complaint. Specimen copies of the visual aid materials were furnished earlier to the plaintiff.) If the prospect is interested and executes an application, the latter, together with the first premium, is forwarded to the defendant.

Following a review of the application, the defendant determines whether to execute an FFA policy and deliver it to the applicant. If a policy is executed, the defendant usually delivers the policy to the defendant's Soliciting Agent through the General Agent for eventual delivery to the applicant.

In (a) transmitting the visual aid materials and the explanatory brochure to Agents, and (b) in transmitting

the application to the defendant, and (c) in delivering the FFA policy to the applicant, the United States mails are used within the State of Nebraska and across State lines.

2. *Interrogatory:*

How are the bonds of the defendant which have been allocated to the Flexible Fund A account valued? How are the bonds of the defendant which are not allocated to the Flexible Fund A account valued?

Answer: Bonds which have been allocated to the FFA Account are valued at market. Bonds which have not been allocated to the FFA Account are valued generally at amortized values, although certain bonds—designated yearly by the National Association of Insurance Commissioners—are valued as directed by it, which value generally approximates market value. These bonds consist generally of bonds in default or or such quality that the market value is generally below the value which would be reached by amortization.

3. *Interrogatory:*

Describe all of the types of communications which are sent by the defendant to holders of FFA "policies."

Answer: The following are sent to FFA policyholders: (a) premium notices, (b) grace period expiration reminders, (c) special reinstatement offers, and (d) the Annual Report referred to in the FFA policy. A specimen copy of the Annual Report for 1963, sent to policyholders in 1964, was earlier supplied to the plaintiff. Specimen copies of the other items are being supplied to the plaintiff.

5. *Interrogatory:*

Describe the steps in computing the Monthly Accumulation Rate in connection with FAA "policies."

Answer: The calculation of the Monthly Accumulation Rate involves arithmetical operations which can be summarized as follows:

(1) + Market value of bonds.
(2) + Market value of stocks.
(3) + Accrued interest.
(4) + Dividends declared but not received.
(5) + Other assets.
(6) — Reserve for defendant's income taxes allocable to Flexible Fund A Account.*
(7) — Net premiums received during month.
(8) + Policy benefits paid and expenses charged.

N Numerator—algebraic sum of items (1) through (8) at the end of the month.

D Denominator—algebraic sum of items (1) through (6) at the end of the previous month.

$$\text{Accumulation Rate} = (.99917)\frac{N}{D}$$

6. *Interrogatory:*

What reserves are maintained in connection with FFA "policies"?

Answer: The reserves maintained fall into two categories—policy reserves and other (non-policy) reserves.

At present policy reserves held in connection with FFA policies consist of (a) the aggregate Cash Values of FFA policies, which reserves are maintained in an account within the FFA Account, and (b) a contingency reserve to cover the Guaranteed Minimum Death Benefit, which reserve is maintained in an account without the FFA Account.

Among the other (non-policy) reserves, maintained in an account within the FFA Account, are reserves, (a) for

* Item (6) = 25% of total unrealized capital gains. Paid capital gains taxes would reduce this reserve. (Subject to the possible amendment of and to the interpretation of federal incom tax law.)

possible capital gains taxes, and (b) for the so-called "actuarial margin" for the current month.

Among the other (non-policy) reserves, maintained in an account without the FFA Account are reserves (a) for premiums paid in advance, and (b) for unpaid commissions and expenses.

When the Accumulated Value of an FFA policy is less than the Guaranteed Minimum Cash Value, the defendant sets up an additional reserve in an account without the FFA Account equal to the difference between the amount of the Accumulated Value for the given policy and the Guaranteed Minimum Cash Value of that policy.

7. *Interrogatory:*

What is the significance of the figure for "surplus" which appears in the informal monthly memoranda prepared by the defendant in connection with the Flexible Fund A account.

Answer: This figure represents a portion of the defendant's Unassigned Surplus which was allocated to the FFA Account at the outset. The figure is calculated by subtracting from the value of the assets allocated to the FFA Account, the current Accumulated Values of FFA policies and other liabilities (the current month's untransferred actuarial margin and the reserve for income taxes).

As of December 31st of each year, this figure is formally reflected in the Annual Report of the defendant prepared in accordance with the instructions of the National Association of Insurance Commissioners.

8. *Interrogatory:*

What reserve for mortality is maintained by the defendant in connection with FFA "policies"?

Answer: The defendant maintains a contingency reserve in an account without the FFA Account to cover the Guaranteed Minimum Death Benefit. As of December 31, 1963, the amount of this reserve was $204.00.

* * * * *

PLAINTIFF'S EXHIBIT No. 9

September 13, 1962

Form 560, Series 114L
Annuity Policy
Form 26L 1-62
Special Annuity Application

Mr. Guy R. Whitten,
Deputy Commissioner,
Insurance Department,
State of Maine,
Augusta, Maine.

Dear Mr. Whitten:

Mr. Pearce has sent us a copy of your August 29, 1962, letter to him, relative to these forms filed with your office last April.

From reading the summary of the Insurance Department comments regarding our Flexible Fund Annuity, it seems to us that we have failed to make a clear and concise statement of the nature of this policy. Actually, it differs from the conventional Deferred Retirement Annuity, such as our Form 523, in only one significant respect. Under the conventional form, net premiums are accumulated at neither more than nor less than some fixed rate, such as two and one-half per cent. Under the Flexible Fund Annuity, very similar net premiums are accumulated at a rate determined by investment results, with the guarantee that the aggregate rate at any time shall be not less than zero per cent, even though investment results may be adverse. Any other differences between this policy and the traditional policy are merely incidental and arise out of this primary difference.

In view of this single pertinent difference, it seems to us that the Insurance Department's comments would fall in two categories. For the first, relating to insurance risk, we would say that the risk under this policy is identical to that under the traditional annual premium retirement

annuity. So far as this Company is concerned, we have an identical death benefit under the Flexible Fund Annuity and under our regular APDRA policy. This death benefit constitutes insurance in the one case to exactly the same degree that it does in the other. We would not say that guaranteed cash values constitute an insurance risk in either case. In the traditional form, the guaranteed cash value is equal to the reserve accumulated from net premiums, with sometimes a surrender charge during the early years. Under the Flexible Fund Annuity, the cash value is the accumulation of net premiums with significant minimum guarantees, but we would not say that such guaranteed values constitute an insurance risk in either case.

[2] The other area in the comments as furnished to us concerns the possibility of impairment of the Company's solvency. While this is a legitimate concern, it must be viewed in the light of the stockholder's equities currently exceeding $50,000,000.00, which would have to be dissipated before any policy reserves would be in jeopardy. Any insurance company must be soundly managed to survive over a period of years. Improper underwriting practices arising from volume pressures could initiate a drain which would threaten solvency, and there are many other areas just as susceptible to management failure. In the particular area under consideration, we feel it is a management problem and responsibility to maintain a reasonable and safe balance between the volume of ordinary insurance and Flexible Fund Annuity, within the limits imposed by stockholder surplus. Without detracting from the responsibility of Company management in this area, we have a feeling that this area will also be closely watched by Insurance Departments beginning with the direct and continuous regulation of the Nebraska Insurance Department, and supplemented by triennial convention examinations. This does not mean that this area of management should be denied to responsible companies.

Both our traditional Annual Premium Deferred Retirement Annuity and our Flexible Fund Annuity are integral

and continuous policies, covering both the "pay in" and the "pay out" periods. It has not been our impression that any Insurance Department disclaimed jurisdiction over a conventional annuity during the accumulation period, on the basis that the insurance elements during such period were relatively small. The Flexible Fund Annuity contains exactly the same insurance elements during that period. In either case, there seems to be no question of the insurance element when the policy becomes a "true annuity" at the time it goes into benefit. If jurisdiction is to exist at that point, it would seem to obtain over the previous 20 to 40 years that the policy may have been in force.

We fully recognize that the flexible feature of this policy during the accumulation portion of its duration involves some breaking away from tradition. That is not necessarily bad in itself, but it does necessitate study and rethinking of problems. We hope that you will think through this matter [3] with us, to the end that the insurance industry may retain some flexibility in adapting to current conditions. This is a retirement annuity policy, and we have a strong feeling that provision for income after retirement is not only a proper insurance company function, but that it should be under the exclusive supervision of the State Insurance Departments.

We would be happy to go into any of these factors further with you, and would appreciate hearing from you.

Very cordially yours,

C. W. BUCKNAM,
Assistant Vice President.

LA

H. A. PEARCE.

PLAINTIFF'S EXHIBIT No. 10

May 16, 1962

Form 560, Series 114L
Annuity Policy
Form 26L 1-62
Special Annuity Application

Honorable Sam N. Berry,
Commissioner of Insurance,
State of Colorado,
State Office Building,
Denver 2, Colo.

Attn. Nathan D. Thompson, Examiner.

Dear Mr. Thompson:

In submitting these forms, regarding which you wrote us on May 11, 1962, we have every intention of being in compliance with S. 289, approved May 1, 1961, which we believe has been codified as section 72-2-14 C. R. S. 1953, amended 1961. If these are not the same statutes, please let us know in order that we may secure a copy of the section referred to.

Up to now, we have found rather general acceptance of the word "Flexible" as having exactly the same connotation as the word "variable". It would seem to us that the term "Flexible Fund" in block letters and a contrasting color, as a part of the policy title on the first page, would satisfy the requirement of paragraph one of Bulletin Number 35. If the Colorado Insurance Department feels that this does not constitute compliance, we could insert a rubber stamp impression in the open space at the bottom of page one, and would suggest the following wording:

VARIABLE BENEFITS UNTIL MATURITY
SEE THIRD PARAGRAPH ABOVE

We recognize the regulation in Colorado, as in several other states, requiring that any agent who is to sell this

type of business must take a special examination conducted by the Insurance Department. Upon approval of our form in Colorado, agents who have met Company requirements, as commented on in our letter of April 19, 1962, will be required to qualify for special licenses before soliciting any of this type of business.

We believe that our policy and methods of operation qualify under section 72-2-14 C. R. S. 1953, amended 1961, and with Bulletin Number 35. We will appreciate your further comments [2] in order that we may do whatever additional may be necessary.

Very cordially yours,

C. W. BUCKNAM,
Assistant Vice President.

LA

PLAINTIFF'S EXHIBIT No. 11

May 14, 1962

Form 560, Series 114L
Annuity Policy
Form 26L 1-62
Special Annuity Application

Hon. Zack D. Cravey,
Commissioner of Insurance,
State of Georgia,
Atlanta 3, Ga.

Attn. Mr. John Cook.

Dear Mr. Cook:

It was most thoughtful of you to phone us last Wednesday. While I had not related our Flexible Fund policy to Section 56-2508 of the Georgia statutes and was not prepared to discuss such relationship when you called, I believe I have a better understanding of your thinking and of your questions, after having talked about this, than might have developed from correspondence.

It would appear to us that Section 56-2508 was intended to refer to the type of provisions discussed in Mr. Cravey's bulletin dated June 24, 1958, and to prohibit special tontine funds or arrangements under which the policyholder purports to share in the profits from the operation of the company to a greater extent than do policyholders in general. While our Flexible Fund Annuity is prima facie not the type of policy to which either one of these restrictions would apply, we must look further to determine whether this section does in fact apply to this form.

Section 56-2508, by its beginning paragraph, refers to any benefit, plan or agreement which is in *addition to* the rights or benefits provided by a basic life policy. The Flexible Fund Annuity is complete within itself and neither contains nor implies any benefits other than those provided in the base policy. [Illegible.] It would, therefore, appear

that this section was not intended to apply to such a policy, but since there is some obscurity in the wording of this paragraph, an analysis of the subsequent paragraphs may be fruitful.

We believe it would be agreed that paragraph (1), (2), and (4) have no relevance in this situation. Interpretation of paragraph (3) is not so easy.

Paragraph (3) seems to say that no funds or money, other than the normal reserve required to meet the contractual guarantees of the policy, shall be placed in a special or segregated account for distribution to holders of such policies. This applies whether such funds arise from a portion of the premium, from dividends, from lapses, excess interest, or from any other source. Our policy [2] is specific as to the net premiums credited to the separate account and the basis of accumulation of such net premiums. Such accumulation constitutes the normal reserve. No holder can receive any distribution from this account other than the accumulation of his own deposits to the account. Any amount by which a guaranteed minimum value may exceed such accumulation is guaranteed by the Company and will be paid from general company funds.

This analysis was made jointly with, and is concurred in by, the Associate General Counsel of the Company. We are convinced that the policy in question is in compliance with Section 56–2508, but that such compliance is not relevant because this section was not intended to cover this type of policy. Chapter 56-25 applies only to life insurance policies. This is an annuity policy governed by Chapter 56–26.

In the course of our conversation on Wednesday, we also discussed the methods of determining and applying the accumulation rate. The attached sheet may help to clarify the policy wording in this regard.

Taking figures on an entirely hypothetical basis, this might be illustrated as follows:

	4/30	5/31
Market value—stocks	$75,000	$77,000
Market value—bonds	25,000	25,500
Accrued interest and dividends	500	600
Uninvested cash (Flow)	500	1,000
	$101,000	$104,100
May Net Premiums		−3,000
May Withdrawals		+ 400
		$101,500

$$\text{Accumulated Rate} = \frac{.99917 \times 101{,}500}{101{,}000} = 1.004116$$

Since the accumulation rate must reflect the investment results during the month, and any cash investment income as well as net premiums or withdrawals are reflected in either an investment account or in uninvested cash on the last day of the month, such premiums must be taken out of, and withdrawals put back into, the numerator so the resulting accumulation rate will represent investment results. We have emphasized the fact that it is entirely possible for the rate to come out to be less than unity for any individual month.

From the standpoint of an individual policy with an accumulation of $1,000 on April 30 and a $100 net premium due May 1: If the May 1 premium is paid by May 10, it is accumulated from the first of the [3] month, so the May 31 value would be ($1,000 + $100) × 1.004116, or $1,104.53. If this premium is paid after May 10, the May 31 value would be ($1,000 × 1.004116) + $100, or $1,104.12.

We apologize for this letter having necessarily become somewhat long. The points which you raised certainly must be resolved, and we hope this will help. If there are other questions, either on these points or on other points, we hope to have the opportunity of discussing them with you. If it develops that such questions may be resolved more expeditiously by our visiting with you in Atlanta, we will be happy to do so.

Very cordially yours,

SS
Enc.

C. W. Bucknam,
Assistant Vice President.

PLAINTIFF'S EXHIBIT No. 13

[Letterhead of United Benefit Life Insurance Company]

February 3, 1964

N. M. Longworth President
Omaha, Nebraska

Mr. John Ublic,
Omaha, Nebraska.

Annual Report For Annuity Policy Specimen

Dear Mr. Ublic

The retirement income plan represented by your annuity policy is a *long-range program* by which you intend to secure for yourself a guaranteed fixed monthly income after retirement. It is a program in which you pay premiums to the Company until the maturity date which has been selected by you, and after such maturity date the Company pays you a fixed monthly retirement income; an annuity income which you cannot outlive, and which cannot be less than the annuity income based upon the guaranteed minimum cash value of your annuity on the maturity date.

The Company contracted to send this Annual Report in order that you be aware—even at the present time when your annuity has been in force only a relatively short time—of the value of contractual rights contained in your annuity. These rights include not only the guaranteed minimum cash value, but the accumulated value of your annuity which is based upon the value of common stocks and other investments owned by the Company and accumulated dividends or interest thereon allocated to a separate account maintained by the Company, under Nebraska law, in connection with your annuity and other similar annuities.

Your annuity provides for a *guaranteed minimum death benefit*, an amount equal to the sum of the full premiums paid by you. The amount of the premiums paid by you up to December 31, 1963, totals $2,200.00.

Your annuity provides for a *guaranteed minimum cash value* computed as a percentage of the *net* premiums paid by you, in accordance with paragraph 9 of your annuity. After your annuity shall have been in force for 10 or more

years, the guaranteed minimum cash value will be 100 per cent of the net premiums.

[2] Your annuity provides for an alternative cash value—the *accumulated value* determined by a monthly accumulation rate provided for in paragraph 12 of your annuity. This accumulation rate is based upon the changes in value of the common stocks and other investments owned by the Company, and dividends or interest derived therefrom, allocated to the separate account.

The amount of net premiums attributable to your annuity as of December 31, 1963, was $1,505.00.

As of December 31, 1963, the accumulated value of your annuity was $1,631.94.

Your annuity guarantees that after the maturity date, you will receive a fixed monthly retirement income determined by the amount of the guaranteed minimum cash value of your annuity on the maturity date. In addition, a valuable feature of your annuity is the Company's unconditional and unqualified obligation to pay you a *higher* fixed monthly income after maturity in the event the accumulated value of your annuity on the maturity date is greater than the guaranteed minimum cash value.

We are pleased that the Company's investment experience in connection with the separate account, as reflected above, has thus far been favorable. The Company is optimistic about the likelihood that on the maturity date the accumulated value of your policy will be higher than the guaranteed minimum cash value, despite monthly or yearly fluctuations in the market value of the common stocks and other investments of the Company allocated to the separate account.

Sincerely,

/s/ DALE R. GUSTAFSON,
Vice President and Actuary.

LW

When writing about your policy, please give number.

United Benefit Life Insurance Company—One of America's Leaders

Plaintiff's Exhibit No. 14

Flexible Fund Annuity Account
December 31, 1963

Assets		Liabilities	
Cash	$ 46.36	Policy Accumulations	$110,159.69
Bonds (Market)	87,194.15	Actuarial Margins	229.76
Stocks (Market)	196,465.42	Accrued Income Tax	3,892.33
Accrued Int.	1,119.62		
Declared Div.	1,464.78	Surplus	172,008.55
Total	$286,290.33	Total	$286,290.33

	December 1963	1963 to date	1962	Total to 12/31/63
Cost of securities	$ 10,802.25	$ 73,899.91	$200,952.05	$274,851.96
Market value of securities	14,541.41	95,948.89	187,710.68	283,659.57
Market gain (loss)	$ 3,739.16	$ 22,048.98	$(13,241.37)	$ 8,807.61
Interest earned	310.10	3,282.20	2,130.62	5,412.82
Dividends earned	580.45	5,613.34	2,424.12	8,037.46
Income tax accrued	(664.63)	(3,316.11)	(576.22)	(3,892.33)
Total investment results	$ 3,965.08	$ 27,628.41	$(9,262.85)	$ 18,365.56
Gross Premiums	6,785.00	95,155.00	66,135.00	161,290.00
Less				
Premium loadings	981.00	22,828.14	32,966.27	55,794.41
Actuarial margins	229.76	2,325.05	1,350.54	3,675.59
Withdrawals	0	1,009.46	108.11	1,117.57
Death benefits	0	3,051.74	18.51	3,070.25
Policy accumulations	6,233.96	75,926.33	34,233.36	110,159.69
Gain (Loss)	$ 3,305.36	$ 17,642.69	$(11,804.64)	$ 5,838.05

Plaintiff's Exhibit No. 14—Continued

	December 1963	1963 to date	1962	Total to 12/31/63
Contributed surplus			166,170.50	166,170.50
Current surplus			154,365.86	172,008.55

Accumulation rate 1.013690

For $100 monthly premium beginning March 1, 1962:

Gross premiums to December 31, 1963	$ 2,200.00
Net premiums to December 31, 1963	1,505.00
Accumulations to December 31,.1963	1,631.94

C. W. B.
1/17/64

PLAINTIFF'S EXHIBIT No. 18

April 19, 1962

Form 560, Series 114L
Annuity Policy
Form 26L 1-62
Special Annuity Application

Mr. Howard M. Gandee,
Deputy Commissioner,
Insurance Department,
State of West Virginia,
Charleston, W. Va.

Dear Mr. Gandee:

Recognizing that our Flexible Fund Annuity involved a few variations from traditional patterns, our initial filing of these forms was on a restricted basis in order that we might get an idea as to what additional requirements might be made. The response to the initial filing has been such that we have just recently extended our filing to most of the states.

At the moment we have direct specific approvals in the States of Arkansas, Montana, Nebraska, Nevada, Oregon and Washington. The State of Ohio has advised us that filing of such a form is not required, and the same is, of course, true in Hawaii.

Colorado has requested details of the application of the formula outlined in Paragraph 12, as well as copies of sales literature. We are enclosing copies of the material which we have just sent to Colorado, since it may be of interest to you as well. In connection with our sales program, sale of this form is strictly limited to agents who have attended a special two-day school and have passed an examination on it. No agent can attend this school without having completed our regular Life Insurance Schools and maintained certain minimum life insurance production and persistency requirements.

Connecticut has raised questions, particularly with re-

gard to the relationship of the guaranteed values to the separate account, and to the extent of the mortality element involved. These questions are being discussed with the Connecticut Department.

Illinois has currently withheld approval because of their [2] impression that holders of such policies participate in gains but not in losses. This is not the situation under our policy, the minimum guaranteed values being substantially less than the sum of the premiums particularly in the early years. This point is being discussed with Illinois.

The New Jersey Statute has a specific requirement for staggering of any pay-out other than on death, in that it must be on a variable basis over a period of not less than three years. While our policy is not a variable annuity, it would be necessary that we amend our form to meet such specific legal requirements for issue in the State of New Jersey.

Arizona indicated some fear that they might become involved in joint regulation with Federal Bureaus. This has been discussed with them, and we have been given verbal indication that they expect to approve it.

Indiana and Pennsylvania have acknowledged our filing with the comment that it has been referred to members of their respective staffs for study.

The District of Columbia has raised the question as to our placing a lower limit on possible policy values, without having placed an upper limit on such values as well. This part will be discussed with them.

This has necessarily become a long letter. We have attempted to approach this relatively new field cautiously and conservatively, and we appreciate your having given us the opportunity to supplement our original filing. Please let us know if you have any other questions, or if there are other facets of this operation which we should discuss.

Very cordially yours,

C. W. Buckman,
Assistant Vice President.

KB
Encs.

[Filed June 20, 1963]

[Title omitted]

DEFENDANT'S RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSIONS

United Benefit Life Insurance Company, defendant, makes the following responses pursuant to Rule 36 of the Federal Rules of Civil Procedure to the requests for admissions served upon it by plaintiff on June 7, 1963, for the purpose of this action only, and subject to all pertinent objections to the use by plaintiff of the said responses.

1. Defendant has sold, is selling, and is about to sell to the public what the defendant designates as an "Annual Premium Flexible Fund Retirement Annuity" ("APFFRA").

R. Defendant admits the truth of the matters set forth in this request.

2. The defendant commenced the sale of APFFRA in March 1962, and as of October 17, 1962 a total of 132 APFFRA's had been sold.

R. Defendant admits the truth of the matters set forth in this request.

* * * * *

8. An interest factor is included in the determination of the "reserve" referred to in paragraph 21 of the "*Annual Premium Deferred Annuity*" policy sold by the defendant.

R. Defendant admits the truth of the matters set forth in this request.

* * * * *

23. The defendant believes that approximately one-half of the amount designated by it in "Annex 2" as "Actuarial Margin" is required to cover the estimated cost of investment management to be incurred by the defendant in respect of Flexible Fund A and to provide profits to the defendant.

R. Defendant is unable to admit or deny the truth of the matters set forth in this request for the following reasons. This request cannot be answered separately and must be considered with request numbered 24. Defendant guarantees that the only expense charge in connection with its APFFRA policy will be the amount of premium "loadings" plus the "actuarial margin," which amounts are transferred into defendant's general funds. If expenses exceed these amounts defendant and its shareholders bear the amount of the loss. Defendant estimates that investment expenses in connection with the APFFRA policy will, over the years, amount to about one half of one percent of the continuing monthly total values of the assets held in Separate Account A. Defendant also estimates that the aggregate costs, over the years, of fulfilling the mortality guarantees and the minimum cash value guarantees made by defendant will be about one-half of one percent of the continuing total asset values in Separate Account A. In the event that the total of investment expenses, mortality guarantee costs and minimum cash value guarantee costs are less than one-percent, then defendant will make a profit on this line of business if the other expenses incurred in connection with the APFFRA policies are in fact covered by the premium "loadings." Defendant does not earmark either the premium "loadings" or the actuarial margin for payment of specific expenses.

24. On the basis of studies made by it, the defendant estimates that approximately one-half of the amount designated by it in "Annex 2" as "Actuarial Margin" is required to cover the anticipated mortality costs to the defendant and the anticipated costs to the defendant of guaranteeing "minimum cash values" to be incurred as a result of defendant's sale of APFFRA.

R. The response to request numbered 23 is incorporated herein by reference as though set out verbatim, except for the second sentence thereof.

[Filed July 15, 1963]

[Title omitted]

DEFENDANT'S RESPONSES TO PLAINTIFF'S SUPPLEMENTAL REQUESTS FOR ADMISSIONS

United Benefit Life Insurance Company, defendant, makes the following responses pursuant to Rule 36 of the Federal Rules of Civil Procedure to the supplemental requests for admissions served upon it by plaintiff on June 28, 1963, for the purpose of this action only, and subject to all pertinent objections to the use by plaintiff of the said responses.

* * * * *

27. Of the total payments made by a holder of an APFFRA, the following percentages are allocated by the defendant to its "General Funds":

	First Year	Second to Tenth Years	Eleventh and Subsequent Years
Percent of Total Payments	50.0%	9.5%	5.0%
Percent of Monthly Asset Value	0.083%	0.083%	0.083%

R. Defendant admits the truth of the matters set forth in this request.

* * * * *

31. The formula for determining the "monthly accumulation rate" referred to in paragraph 12 of Exhibit A to the Complaint, is set up to reflect the investment increment during the month on those funds which were available on the first of the month.

R. Defendant denies the truth of the matters set forth in this request as stated. Defendant admits that the said formula is set up to reflect the investment increment during

the month on those assets which were present as of the first of the month, but the formula does not represent the full investment increment on assets allocated to Separate Account A because .083 per cent of the value of the assets allocated to the Separate Account A at the end of the month is transferred from Separate Account A into the defendant's general funds. Paragraph 8 of the APFFRA policy provides that premiums received on or before the 10th day of the month shall be credited as of the first day of such month. Paragraph 9 of the APFFRA policy provides that the cash value of the policy shall be the amount of accumulated value (determined in accordance with paragraphs 8 and 12 of the APFFRA policy) *but not less than* the guaranteed minimum cash value determined in accordance with said paragraph 9.

34. The "monthly accumulation rate," being based on the investment growth of assets in the "Flexible Fund A account" during the calendar month, is applied directly to the "accumulated value" of any APFFRA.

R. Defendant denies the truth of the matters set forth in this request as stated. Defendant admits that the monthly accumulation rate is based on the investment experience during the calendar month of the assets allocated to Separate Account A; and that the monthly accumulation rate is applied directly to the accumulated value of an APFFRA policy. Paragraph 9 of the APFFRA policy provides that the cash value of the policy shall be the amount of accumulated value (determined in accordance with paragraphs 8 and 12 of the APFFRA policy) *but not less than* the guaranteed minimum cash value determined in accordance with said paragraph 9.

40. The "guaranteed minimum cash values," within the meaning of paragraph 12(a) of Exhibit A attached to the Complaint, as of December 31, 1962, were in an aggregate

total of approximately $16,400, with total "accumulated values" on all outstanding APFFRA's being over $34,000.

R. Defendant admits the truth of the matters set forth in this request.

* * * * * *

44. In the course of considering the "minimum cash values" to be guaranteed in the APFFRA on a yearly basis, studies were made by appropriate departments of the defendant's staff.

R. Defendant admits the truth of the matters set forth in this request.

45. Following extended discussions based on the studies referred to in request numbered 44 above, the defendant concluded it could undertake the guarantees of the "minimum cash values" stated in paragraph 9 of Exhibit A attached to the Complaint.

R. Defendant denies the truth of the matters set forth in this request as stated. Defendant admits that following extended discussions based on such studies it was concluded that defendant could undertake the various guarantees made by defendant in the APFFRA policy.

* * * * * *

49. No contingency reserve is necessary to cover the minimum death benefit guarantee on any particular APFFRA where the cash value of such APFFRA is greater than the sum of the payments made by the purchaser thereof.

R. Defendant admits the truth of the matters set forth in this request.

50. No reserve is necessary to cover the "guaranteed minimum cash value" on any particular APFFRA where the "accumulated value" of such APFFRA is greater than the "guaranteed minimum cash value" of such APFFRA.

R. Defendant denies the truth of the matters set forth in this request. Defendant admits that no reserve, other than

the regular policy reserve, is necessary to cover the guaranteed minimum cash value on any particular APFFRA policy where the accumulated value of such APFFRA policy is greater than the guaranteed minimum cash value of such APFFRA policy.

[Filed March 17, 1965]

[Title omitted]

DEFENDANT'S MOTION TO DISMISS UNDER FEDERAL RULE OF CIVIL PROCEDURE 41(b)

The trial of this action commenced on March 15, 1965 and the plaintiff rested its case on March 15, 1965. The defendant, United Benefit Life Insurance Company, thereafter, advised the Court of its intention to file a written motion to dismiss the present action, with prejudice, and the Court directed that said written motion be filed and served on March 17, 1965, and that defendant's Memorandum of Points and Authorities in support of the motion be filed and served on Mareh 19, 1965. The present document constitutes the defendant's said written motion to dismiss.

Defendant moves the Court to dismiss the present action, with prejudice, under the Federal Rules of Civil Procedure on the ground that upon facts and the law the plaintiff has failed to show a right to relief. The plaintiff has failed to prove that the Flexible Fund Annuity policy issued by the defendant is a security within the meaning of the federal securities laws and that it is not an insurance product under the decision of *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Company*, 359 U.S. 65.

DAWSON, GRIFFIN, PICKENS & RIDDELL.
By: /s/ M. JOSEPH STOUTENBURGH,
Washington Building,
Washington, D. C., 20005.

BLANK, RUDENKO, KLAUS & ROME.
By: /s/ DANIEL J. MCCAULEY, JR.,
/s/ MORRIS L. WEISBERG
1660 Suburban Station Building,
Philadelphia, Pennsylvania,
19103.

/s/ DONALD F. EVANS,
Vice President and General Counsel,
United Benefit Life Insurance Company,
Omaha, Nebraska.

Dated: March 17, 1965

[Filed April 5, 1965]

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came on for trial, and the Court having considered the evidence, finds the facts and states its conclusions of law as follows:

Findings of Fact

1. The plaintiff is the Securities and Exchange Commission, an administrative agency of the United States charged with the administration of the federal securities laws.

2. Defendant, United Benefit Life Insurance Company, is a legal reserve, stock, life insurance company incorporated and existing under the laws of the State of Nebraska.

3. The defendant is a corporation subject to the supervision of the Director of Insurance of the State of Nebraska and of the insurance commissioner (or similar official) of the other states in which it is authorized to do business and of the District of Columbia.

4. The defendant has been, and intends to continue, offering an annuity referred to as the Annual Premium Flexible Fund Retirement Annuity (herein called the FFA policy).

5. Under the guaranteed minimum cash value provision in the FFA policy the defendant guarantees to the annuitant a fixed dollar equal monthly retirement income after the maturity date is reached which income cannot be outlived and the defendant thereby assumes the investment risk involved in that guarantee.

Conclusions of Law

1. The Court has jurisdiction over the parties and of the subject matter.

2. The issue in the present case is whether the FFA policy is a security within the definition and legislative intendment of the Securities Act of 1933 or is an "insurance

policy," "annuity" or "optional annuity contract" within the exemption provided in Section 3(a)(8) of that Act.

3. In *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Company,* 359 U.S. 65 (1959), (VALIC), in deciding that the contract there involved was a security and not an "insurance product," the Supreme Court said that:

> "The difficulty is that, absent some guarantee of fixed income, the variable annuity places all the investment risks on the annuitant, none on the company. The holder gets only a *pro rata* share of what the portfolio or equity interest reflects—which may be a lot, a little, or nothing."
>
> * * * * *
>
> "The companies that issue these annuities take the risk of failure. But they guarantee nothing to the annuitant except an interest in a portfolio of common stocks or other equities—an interest that has a ceiling but no floor."
>
> * * * * *
>
> "In hard reality the issuer of a variable annuity that has no element of a fixed return assumes no true risk in the insurance sense."
>
> * * * * *
>
> "We deal with a more conventional concept of risk-bearing when we speak of 'insurance.' For in common understanding 'insurance' involves a guarantee that at least some fraction of the benefits will be payable in fixed amounts."

As is found in Paragraph 5 above, the minimum guarantee in the FFA policy does provide a guaranteed basic fixed dollar monthly equal retirement income, after the maturity data has been reached, which cannot be outlived.

The Court accordingly concludes that the FFA policy is an insurance product within the interpretation of VALIC.

4. The FFA policy, therefore, is not a security within the Securities Act of 1933.

5. Upon the facts and the law, the plaintiff has failed to show a right to the relief prayed for in the complaint. The complaint shall be dismissed.

Order

And Now this 5 day of April, 1965, it is

ORDERED, ADJUDGED and DECREED that the relief prayed for in the complaint is denied in all respects, and it is further

ORDERED, ADJUDGED and DECREED that the complaint of the plaintiff be and the same hereby is dismissed on the merits.

/s/ EDWARD M. CURRAN,
U.S. District Judge.

[Filed April 15, 1965]

[Title omitted]

NOTICE OF APPEAL

Notice is hereby given that the plaintiff, Securities and Exchange Commission, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the order denying in all respects the relief prayed for in the complaint and dismissing the complaint of the plaintiff on the merits which order was entered in this action on April 5, 1965, and constituted a final judgment of the Court.

/s/ PHILIP A. LOOMIS, JR.,
General Counsel.
/s/ WALTER P. NORTH,
Associate General Counsel.
/s/ ROBERT L. MCCLOSKEY,
Attorney.
/s/ JACOB H. STILLMAN,
Attorney.
Securities and Exchange Commission, Washington, D.C., 20549

Copy to: M. JOSEPH STOUTENBURGH,
DAWSON, GRIFFIN, PICKENS & RIDDELL,
Washington Building,
Washington, D.C., 20005.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1965 785319 141

[fol. 109] IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19382

SECURITIES AND EXCHANGE COMMISSION, Appellant,

v.

UNITED BENEFIT LIFE INSURANCE COMPANY, Appellee.

Appeal from the United States District Court for the District of Columbia

Mr. *Walter P. North,* Associate General Counsel, with whom *Mr. Philip A. Loomis, Jr.,* General Counsel, Securities and Exchange Commission, was on the brief, for appellant. *Mr. Robert L. McCloskey,* Attorney, Securities and Exchange Commission, also entered an appearance for appellant.

Mr. Daniel J. McCauley, Jr., of the bar of the Supreme Court of Pennsylvania, *pro hac vice,* by special leave of court, with whom *Mr. M. Joseph Stoutenburgh* was on the brief, for appellee.

Mr. Joseph B. Levin, with whom *Mr. Marc A. White* was on the brief, for Investment Company Institute and National Association of Securities Dealers, Inc., as *amici curiae,* urging reversal.

[fol. 110] Before BAZELON, *Chief Judge,* EDGERTON, *Senior Circuit Judge,* and BURGER, *Circuit Judge.*

OPINION—March 10, 1966

BAZELON, *Chief Judge:* The basic issue in this case is whether the Flexible Fund Annuity (FFA) issued by appellee United Benefit Life Insurance Company (United) is subject to federal regulation under the Securities Act of 1933 and the Investment Company Act of 1940. The Securities and Exchange Commission sought injunctive relief in the District Court against United on the grounds that the FFA contract is an unregistered "security" within

the definition of the 1933 Act[1] and that the separate account, which United created in connection with the FFA, is an unregistered "investment company" within the meaning of the 1940 Act.[2] The District Court ruled that the FFA was an "insurance product," exempted from regulation under both Acts.[3] This appeal followed.

The FFA contract is framed as a deferred annuity policy. The policyholder agrees to pay United a specified gross premium periodically—*i.e.*, once a month—for a certain number of years. These premiums, less deductions for expenses, are accumulated by United during this deferred period in a separate account, known as Flexible Fund A. Unlike a conventional annuity, however, United does not guarantee to accumulate net premiums at a [fol. 111] specified rate of interest. Instead, United promises that the annuitant will be credited with a proportionate share of the profits which have resulted from the investment and reinvestment of the money in the Flexible Fund. In addition, United guarantees that at least 100 per cent of the net premiums will stand to the account of the annuitant throughout the deferred period if the investment experience of the Fund is unprofitable.[4] Cash surrender values equal

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[1] 48 Stat. 74 (1933), as amended, 15 U.S.C. § 77b(1) (1964).

[2] 54 Stat. 797 (1940) as amended, 15 U.S.C. § 80a-3, (1964).

[3] The Securities Act of 1933 contains an exemption for,

> "Any insurance or endowment policy or annuity contract or optional annuity contract . . . ." 15 U.S.C. § 77c(a)(8) (1964).

The District Court did not explicitly address itself to the Investment Company Act, but implicit in its decision is a finding that the Flexible Fund fell within the exemption of that Act for "any bank or insurance company . . . ." 15 U.S.C. § 80a-3(c)(3) (1964).

[4] This assumes that the deferred period is ten years or longer. If the deferred period is less than ten years, United only guarantees a percentage of the net premiums, ranging from 50 per cent in the first year to 90 per cent in the ninth year.

to the accumulated value or minimum guarantee of the policy, and death benefits equal to the accumulated value or total gross premiums paid, whichever are higher, are also provided during the deferred period. At the maturity date specified in the policy, the annuitant is given the option of withdrawing the accumulated value of his policy in cash or of applying this value to a fixed annuity at rates prescribed in the initial contract. These rates are based upon a guaranteed 2½ per cent interest factor during the pay-out period, and once United begins payments to the annuitant the value of his policy is fixed; the profits made by the Fund are no longer accumulated in favor of the annuitant.

The result in this case, as both parties recognize, is controlled by the Supreme Court's recent decision in the *VALIC* case.[5] At issue in *VALIC* was a variable annuity policy which did not guarantee a fixed monetary value for the annuity either in the deferred or pay-out periods; its value at all times depended directly upon the investment experience of a pool of securities, and the annuitant was, in effect, a direct participant in that pool. The ques-[fol. 112] tion was whether this variable annuity was a "security" within the meaning of the 1933 and 1940 Acts or a "contract of insurance," which would be exempt from the Acts by their own terms, as well as by the provisions of the McCarran-Ferguson Act.[6] The majority of the Court found that the issuing company had assumed the mortality and expense risks usually associated with insurance. However, since the company did not guarantee a fixed monetary value for the policy, it placed "all of the investment risk on the annuitant, none on the company." Because the concept of insurance required "some investment risk-taking on the part of the company," the Court concluded that the variable annuity was not "insurance" and hence was subject to federal regulation.

In a concurring opinion, Mr. Justice Brennan explained in greater detail why the factor of investment risk was determinative. He pointed out that the purpose of the

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[5] *SEC* v. *Variable Annuity Life Ins. Co.*, 359 U.S. 65 (1959).

[6] 59 Stat. 33 (1945), as amended, 15 U.S.C. § 1011 (1964).

federal regulatory scheme had only minimal relevance to conventional insurance and annuity policies, which assumed the investment risk by creating fixed monetary obligations, and that state regulation of reserves and solvency offered truly meaningful protection to the policyholder. Mr. Justice Brennan reasoned that since the variable annuity in *VALIC* did not include substantial fixed dollar guarantees, federal regulation was quite relevant to the variable annuity contract, while state regulation was not; he therefore found the contract a "security," subject to the 1933 and 1940 Acts. In sum, both the majority and concurring opinions implicity held that a company must bear a substantial part of the investment risk associated with the contract, as well as the mortality and expense risks, in order to qualify its products as "insurance."

In most respects the FFA and the traditional deferred [fol. 113] annuity are identical. Both guarantee interest on principal during the pay-out period; both assume all mortality and expense risks throughout the term of the contract; and both provide death benefits and cash surrender values.[7] The only meaningful difference between the FFA and the conventional deferred annuity is that the FFA does not guarantee interest on the accumulation of net premiums during the deferred period, but instead promises 100 per cent of net premiums plus a share in any profits made by the investment and reinvestment of the money in the Flexible Fund.

The SEC would minimize the similarities between the FFA and the deferred annuity first by asserting jurisdiction only over the deferred portion of the contract. The SEC then contends that the "investment risk" referred to in *VALIC* is the risk of not earning interest on the principal sum invested and that a contract is not "insurance"

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[7] For a general description of the conventional deferred annuity see, *e.g.*, HUEBNER & BLACK, LIFE INSURANCE 104-16, 311-22, 329-30, 332-34 (6th ed. 1964) [hereinafter cited as HUEBNER & BLACK]; MEHR & OSLER, MODERN LIFE INSURANCE 79-103, 531-47 (3rd ed. 1961) [hereinafter cited as MEHR & OSLER].

unless interest as well as principal is guaranteed. In support of this position the SEC emphasizes the extent to which the fortunes of the annuitant depend upon the investment policies and experience of the Fund and argues that the court should not treat the minimum guarantee of 100 per cent of net premiums as a substantial assumption of investment risk because it is extremely unlikely that the Fund's investment experience will be so disastrous as to call the guarantee into effect.

We note initially that adoption of the SEC's position that interest must be guaranteed during the deferred, as well as the pay-out period would restrict annuity policies essentially to their current form. This result would con- [fol. 114] travene the explicit warning of the Supreme Court in *VALIC* where all nine Justices counseled against freezing the concept of annuity into a single pattern and argued that development and growth of insurance concepts should be allowed.[8] We also think that the SEC has misconceived the concept of "investment risk," as it is used in *VALIC*, by focusing on the likelihood of United's having to make good on its guarantee. Presumably no insurance company will undertake a guarantee in any policy if there is a substantial possibility that it will have to resort to surplus to satisfy that obligation.[9] Instead of denoting the company's risk, we think the concept refers to the annuitant's risk of losing money—principal, as well as anticipated earnings on principal—over the course of the investment period. By guaranteeing principal—100 per cent of net premiums—United has assumed a substantial part of this risk during the deferred period of the contract. Were the annuitant to invest on his own in the stock market, or even in so-called "safe" securities like

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[8] 357 U.S. at 68, 71, 75-76, 100-01.

[9] If an insurance company guarantees 2 per cent or 3 per cent interest, it does so only after it has made extensive studies which demonstrate to its satisfaction that there is no substantial probability that the funds associated with the policy will fail to earn this amount over the duration of the contract. See, *e.g.*, HUEBNER & BLACK 296-300, 346-47, 388-90; MEHR & OSLER 590-93, 599.

bonds and mortgages, he would not have this guarantee, and his principal would never be absolutely secure.[10]

[fol. 115] Finally, we reject the SEC's basic premise that the contract should be fragmented and the risk during the deferred period only should be considered. United's guarantee of principal and 2½ per cent interest during the pay-out period is a very substantial assumption of investment risk, which should not be ignored. Indeed, the *VALIC* opinions, as well as common sense, indicate that a challenged policy should be viewed as a whole in order to test its amenability to federal regulation. All told, United has assumed not only a substantial part, but by far the major part, of the investment risk over the duration of the entire policy.[11] The obligations of United under the FFA, unlike

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[10]The SEC also urges that so long as the contract allows the annuitant any direct participation in the investment experience of the company, the policy must be subject to the federal regulatory scheme. This argument ignores completely the language and logic of *VALIC*, which contemplated a test based on the substantiality of the investment risk assumed by the company. See 359 U.S. at 71-73, 88, 89. A related objection to this argument is the effect that it would have upon the participating annuity, which the SEC concedes is exempt from federal regulation. The participating annuity clearly provides, and is intended to provide, that the annuitant will participate directly, even if minimally, in the investment experience of the company. See, *e.g.*, HUEBNER & BLACK 387-98; MEHR & OSLER 598-605; 614-20.

[11]The substantiality of the investment risk which United assumes in the FFA is even more apparent when that policy is compared with a participating annuity. In the latter, the interest factor during the deferred period is deliberately set quite low so as to assure dividends; and while dividends are in theory discretionary, in practical terms they must be declared regularly or the company will lose too much business. In effect, a participating policy promises, in part, a smaller interest guarantee in return for the opportunity to share in greater interest when that is earned. See, *e.g.*, HUEBNER & BLACK 387-402; MEHR &

those of the variable annuity, are stated, in large part, in terms of guaranteed dollar amounts; there is a substantial and meaningful "floor" to the FFA policy. We therefore conclude that the FFA is an "insurance" contract and as [fol. 116] such beyond the scope of federal regulation under the 1933 and 1940 Acts.[12] The judgment of the District Court is

Affirmed.

OSLER 598-605, 614-20. For this reason the FFA can be regarded as an extension or development of the concept of participating insurance.

[12] The SEC finally contends that the case should be reversed because of the trial court's rulings on admission of evidence. Whether or not these rulings were correct, we don't think they affected "substantial justice." FED.R. CIV.P. 61.

[fol. 117] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Civil 3096-62

No. 19,382 September Term, 1965.

SECURITIES AND EXCHANGE COMMISSION, Appellant,

v.

UNITED BENEFIT LIFE INSURANCE COMPANY, Appellee.

Appeal from the United States District Court for the District of Columbia

Before: Bazelon, Chief Judge, Edgerton, Senior Circuit Judge, and Burger, Circuit Judge.

JUDGMENT—March 10, 1966

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof it is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Chief Judge Bazelon.

[fol. 118] CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT OMITTED IN PRINTING.

[fol. 119] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1965

No.—

SECURITIES AND EXCHANGE COMMISSION, Petitioner,

vs.

UNITED BENEFIT LIFE INSURANCE COMPANY.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—June 9, 1966

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 8th, 1966.

Earl Warren, Chief Justice of the United States.

[fol. 120] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1966

No.—

SECURITIES AND EXCHANGE COMMISSION, Petitioner,

vs.

UNITED BENEFIT LIFE INSURANCE COMPANY.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—July 7, 1966

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, further extended to and including August 8, 1966.

Potter Stewart, Associate Justice of the Supreme Court of the United States.

[fol. 121] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1966

No. 428

SECURITIES AND EXCHANGE COMMISSION, Petitioner,

vs.

UNITED BENEFIT LIFE INSURANCE COMPANY.

ORDER ALLOWING CERTIORARI—October 24, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,382

SECURITIES AND EXCHANGE COMMISSION,

Appellant,

v.

UNITED BENEFIT LIFE INSURANCE COMPANY,

Appellee.

JOINT APPENDIX

VOLUME II

United OF OMAHA

UNITED BENEFIT LIFE INSURANCE COMPANY

OMAHA, NEBRASKA
A STOCK COMPANY

FLEXIBLE FUND ANNUITY

Policy No.	SPECIMEN	
Annuity Income: $	6.30	monthly per $1,000.00 cash value under the option indicated.
Annuitant:	JOHN UBLIC	
Age at Issue:	35	
Date of Issue:	JUNE 1, 1964	
Premium:	$. 100.00 MONTHLY BSP	payable on the date of issue and a like amount in advance thereafter until the maturity date or until prior death of the Annuitant.
Maturity Date:	JUNE 1, 1994	
Age at Maturity:	65	
Annuity Option:	A	described in Section 27.

UNITED BENEFIT LIFE INSURANCE COMPANY agrees to pay to the Annuitant, beginning on the Maturity Date, a monthly Annuity Income in such amount as the then cash value of this policy as provided in Section 9 will purchase in accordance with Table 1.

If the Annuitant dies before the Maturity Date and while this policy is in force, the Company will pay to the beneficiary an amount equal to the then cash value of this policy, but in no event less than the sum of the premiums which have been paid hereon reduced by the amount of any Partial Withdrawals which have not been repaid. The beneficiary shall be the person or persons so named in the application or subsequently designated in accordance with the terms of this policy.

Prior to the Maturity Date, the value of this policy is not guaranteed other than as specifically provided herein, but will depend upon the investment experience of Flexible Fund A.

After the Maturity Date, the benefits payable hereunder will be fixed in amount, and will no longer depend on the investment experience of Flexible Fund A.

This contract, executed by the United Benefit Life Insurance Company on the date of issue set out above, includes the provisions on the following pages.

Grant P. Hammer
Secretary.

R. M. Langworth
President.

Annual Premium FLEXIBLE FUND Retirement Annuity.
Minimum Return Guaranteed on Death or Surrender Before Maturity.
Premiums Payable Until Maturity Date or Until Prior Death.
Nonparticipating.

Form 760—Series 114L
F.F.A. - 10-61

LS 17

PREMIUMS

1 - CONSIDERATION - The consideration for this policy is the application therefor and the payment of premiums in the amounts and at the times stated on the first page.

2 - MANNER OF PAYMENT - All premiums are due and payable in advance at the home office of the Company in the City of Omaha, Nebraska, or to an authorized agent on or before the date due, but in any case, only in exchange for the Company's receipt therefor, signed by the President, Vice-President, Secretary or Assistant Secretary of the Company and countersigned by such agent.

3 - DEFAULT - Failure to pay any premium when due shall constitute a default in premium payment and shall cause this policy to be null and void, except as herein provided.

4 - GRACE PERIOD - A grace period of thirty-one days will be granted for the payment of every premium after the first during which time this policy shall remain in force.

5 - REINSTATEMENT - At any time within three years after the due date of a premium in default, this policy, unless previously surrendered for its cash value, may be reinstated upon payment of arrears of premiums. Premiums so paid shall be credited to this policy when paid, in the manner provided in Sections 7 and 8.

FLEXIBLE FUND ACCOUNT

6 - This policy is issued under the authority of Nebraska Statutes providing for segregation in a special account of amounts paid and reserves held in connection with designated pension, retirement or profit sharing plans or annuities, and providing that income and gains or losses on such account may be credited to or charged against the amount allocated to such account in accordance with such contract, without regard to the other income, gains or losses of the Company. Such special account is herein referred to as the Flexible Fund A account.

NET PREMIUMS

7 - All net premiums on this policy shall be credited to the Flexible Fund A account. The net premium shall be such portion of each premium paid for respective policy years as is indicated by the following table:

First policy year	-	50.0%
Second through tenth policy years	-	90.5%
Eleventh and subsequent policy years	-	95.0%

POLICY VALUES

8 - The accumulated value of this policy at the end of any month from the issue date shall be the accumulated value as of the end of the previous month, increased by any net premiums and repayments of partial withdrawals credited as of the beginning of the month and decreased by any partial withdrawals during the month, multiplied by the Monthly Accumulation Rate as determined by the Company for such month on the basis hereinafter described.

The net premium portion of any premium received at the home office of the Company on or before the 10th day of the month shall be credited as of the first day of such month, and the net premium portion of any premium received after the 10th day shall be credited as of the first day of the following month.

Since accumulated values depend upon Accumulation Rates based on the investment experience of Flexible Fund A, such value at the end of any month may be less than such value at the end of the previous month.

NONFORFEITURE PROVISIONS

9 - CASH VALUE - At any time prior to commencement of Annuity Income, this policy may be surrendered and the Company will pay the cash value to the Annuitant. The cash value shall be the amount of accumulated value as of the last day of the previous month, increased by the net amount of any premiums paid and decreased by any partial withdrawals made during the current month, but not less than the following minimum amount.

The guaranteed minimum cash value shall be determined by applying the appropriate percentage from the following table to the sum of the net premiums which have been paid, and deducting from such resulting amount the amount of any partial withdrawals which have not been repaid.

Premiums paid for	1 full year	50%
" " "	2 " years	55%
" " "	3 full years	60%
" " "	4 " years	65%
" " "	5 " years	70%
" " "	6 " years	75%
" " "	7 " years	80%
" " "	8 " years	85%
" " "	9 " years	90%
" " "	10 or more years	100%

10 - PAID UP DEFERRED ANNUITY - If any premium on this policy remains unpaid at the end of the grace period, and the Annuitant has not requested payment of the cash value, the accumulated value shall be determined as provided in Section 8 until the Maturity Date, and then applied to purchase Annuity Income in accordance with Table 1 for the option selected.

ANNUAL REPORT

11 - At least once in each policy year after the first policy anniversary, the Company will mail, to the last known address of the Annuitant, a statement of the amount held in Flexible Fund A to the credit of this policy.

MONTHLY ACCUMULATION RATE

12 - Each month, the Company shall determine an accumulation rate for the month equal to 99.917% of the ratio of (a) to (b), where (a) and (b) are defined as follows:

(a) shall equal the market value of the assets in Flexible Fund A at the end of the month, increased by the amount of expenses and policy disbursements charged against such fund and decreased by the amount of net premiums credited to such fund during the month and by the month-end reserve for Company income taxes related to the fund.

(b) shall equal the market value at the end of the previous month of the assets in Flexible Fund A, less the reserve as of that date for Company income taxes related to the fund.

POLICY RESERVES

13 - Prior to the Maturity Date, the aggregate reserves for policies issued under Flexible Fund A shall be the sum of the cash values, increased by such contingency reserve as may be necessary to cover the minimum death benefit guarantee.

After the Maturity Date, the reserve shall be based on the 1937 Standard Annuity Table of Mortality rated down one year for males and six years for females, with interest at two and one-half per cent.

GENERAL PROVISIONS

14 - ENTIRE CONTRACT - This policy and the application, copy of which is attached to the policy when issued, constitute the entire contract between the parties hereto. All statements made by the Annuitant shall, in the absence of fraud, be deemed representations and not warranties and no statement made by the Annuitant or on his behalf shall avoid this policy unless it is contained in the written application therefor.

15 - MODIFICATION - No change or modification may be made, nor shall any forfeiture be waived or the date of payment of any premium be changed, except by agreement in writing signed by the President, Vice-President, Assistant Vice-President, Secretary or Assistant Secretary of the Company.

16 - INCONTESTABILITY - This policy shall be incontestable after it shall have been in force during the lifetime of the Annuitant for two years from its date of issue, except for nonpayment of premiums and except as to provisions and conditions, if any, relating to benefits in event of total and permanent disability.

17 - AGE AND SEX - If the age or sex of the Annuitant has been misstated, the income payable under this policy shall be the amount which the cash value will purchase at the correct age or sex. The Company may require proof of age before making annuity payments hereunder.

18 - POLICY YEARS - Anniversary dates and policy years shall be computed from the date of issue shown on the first page.

19 - OWNERSHIP AND CONTROL - If this policy was applied for by someone other than the Annuitant, such applicant may receive all benefits and exercise all rights which would otherwise have been available to the Annuitant hereunder.

20 - BENEFICIARY - The right to change the beneficiary is reserved by the Annuitant unless revocation of such right has been made in writing by the Annuitant and acknowledged by the Company. If the right to change has not been revoked, the Annuitant may change any beneficiary designation by written notice to the Company. Such change will become effective when acknowledged by the Company.

The interest of any revocable beneficiary shall be subject to the rights of any assignee. If any beneficiary dies before the Annuitant, the interest of such beneficiary shall vest in the Annuitant unless otherwise provided by endorsement hereon.

21 - ASSIGNMENT - No assignment of this policy shall be binding upon the Company until the original or a duplicate thereof is filed with the Company at its home office. The Company will not assume responsibility for the validity of any assignment.

22 - PARTIAL WITHDRAWALS - At any time after the accumulated value reaches $1,500.00 and prior to the commencement of the Annuity Income, upon furnishing proper written request and release, the Annuitant may withdraw from the accumulation hereunder any amount not less than $500.00 or more than the amount by which the then accumulated value provided in Section 8 exceeds $1,000.00. Any amount so withdrawn shall be deducted as set out in Section 8.

Any partial withdrawal may be repaid in whole or in installments of not less than $100.00 each, at any time within one year after the date of withdrawal and prior to commencement of Annuity Income. Any amount of repayment received at the home office of the Company on or before the 10th day of the month will be credited as of the first day of such month, and any repayment received after the 10th day will be credited as of the first day of the following month.

23 - DEFERMENT - The payment of a cash value, or the granting of a partial withdrawal other than for the payment of premiums, may be deferred, at the option of the Company, for a period not exceeding six months after the application therefor is made.

24 - PROOF OF DEATH - Immediately upon receipt at the home office of the Company of due proof that death of the Annuitant occurred while this policy was in force, the Company will pay, at its home office, the amount then due hereon.

OPTIONAL ANNUITY COMMENCEMENT DATES

25 - AT EARLIER AGE - On any policy anniversary prior to the Maturity Date, the Annuitant may, upon written request to the Company accompanied by the policy for endorsement, apply the then cash value of this policy to the purchase of an annuity beginning immediately in accordance with any one of the Optional Annuity Plans set out below.

26 - AT A LATER DATE - On or before the Maturity Date stated on the face of this policy, the Annuitant may change the Maturity Date to any subsequent policy anniversary not later than that nearest the 70th anniversary of his date of birth. On such Maturity Date, the cash value then accumulated shall be applied, at the Annuitant's then attained age, to purchase an Annuity Income in accordance with any one of the Optional Annuity Plans.

The cash value may, at the option of the Annuitant and upon surrender of the policy, be payable in one sum in lieu of being applied as above.

OPTIONAL ANNUITY PLANS

27 - The monthly Annuity Payment for each $1,000.00 of cash value available at the time such payments are to commence shall be that specified in Table 1 for the option indicated on the face of this policy, or subsequently elected in writing by the Annuitant, and for the sex and then attained age of the Annuitant.

If, on the date specified for the annuity payments to begin, the amount of each monthly payment would be less than $25.00, the Company shall not be required to make such annuity payments, but may, at its option, pay in one sum the cash value hereof.

The Company reserves the right to require proof of survival of the Annuitant before making any payment which is contingent upon his being alive on the date such payment is due.

Option A. Life Annuity, 120 months guaranteed - Equal monthly payments shall be made for a minimum guaranteed period of 120 months and for as long thereafter as the Annuitant lives. If the Annuitant dies before annuity payments have been made for the said minimum period, annuity payments will be continued for the remainder of said minimum period to the beneficiary.

Option B. Life Annuity - Equal monthly payments shall be made for the life of the Annuitant, and shall terminate with the last payment preceding death of the Annuitant.

Option C. Installment Refund Annuity - Equal monthly payments shall be made for the life of the Annuitant with a minimum guarantee that should the Annuitant die before the sum of all annuity payments made equals or exceeds the cash value applied to the purchase thereof, the annuity payments will be continued thereafter to the beneficiary until the sum of all annuity payments made to the Annuitant and beneficiary equals such cash value.

TABLE 1

Table of Annuity Options

Monthly Annuity Payment under Annuity Options for each $1,000.00 of cash value available on date annuity payments begin.

Attained Age Male	Attained Age Female	Option A Life Annuity with 120 Months Certain	Option B Life Annuity	Option C Installment Refund Annuity
	35	$3.26	$3.27	$3.17
	36	3.30	3.31	3.20
	37	3.34	3.36	3.24
	38	3.39	3.41	3.28
	39	3.43	3.45	3.32
35	40	3.48	3.50	3.36
36	41	3.53	3.56	3.40
37	42	3.59	3.61	3.44
38	43	3.64	3.67	3.49
39	44	3.70	3.73	3.53
40	45	3.76	3.79	3.58
41	46	3.82	3.86	3.63
42	47	3.88	3.93	3.68
43	48	3.95	4.00	3.74
44	49	4.02	4.08	3.80
45	50	4.09	4.15	3.85
46	51	4.17	4.24	3.91
47	52	4.25	4.33	3.98
48	53	4.33	4.42	4.04
49	54	4.42	4.51	4.11
50	55	$4.50	$4.61	$4.18
51	56	4.60	4.72	4.26
52	57	4.69	4.83	4.33
53	58	4.79	4.95	4.42
54	59	4.90	5.07	4.50
55	60	5.01	5.20	4.59
56	61	5.12	5.34	4.68
57	62	5.23	5.48	4.77
58	63	5.35	5.64	4.87
59	64	5.48	5.80	4.98
60	65	5.61	5.97	5.08
61	66	5.74	6.15	5.20
62	67	5.87	6.34	5.31
63	68	6.01	6.54	5.44
64	69	6.16	6.75	5.57
65	70	6.30	6.97	5.70
66		6.45	7.21	5.84
67		6.60	7.46	5.99
68		6.76	7.73	6.14
69		6.91	8.02	6.31
70		7.07	8.32	6.48

Attained age refers to age of Annuitant on birthday nearest to that contract anniversary on which such elected annuity shall begin.

OPTIONAL METHODS OF SETTLEMENT

ELECTION BY THE ANNUITANT—At any time, by written request to the Company and subject to all the terms and conditions hereof, the Annuitant may direct that the proceeds of this policy on death of the Annuitant, in lieu of being paid in one sum, be paid under one of the Optional Methods of Settlement designated below or in such other manner as may be mutually agreed upon in writing between the Annuitant and the Company.

Such designation and agreement shall be effective only when accepted by the Company by endorsement hereon. The Annuitant may at any time revoke such designation and agreement by written request to the Company, such revocation to take effect only when acknowledged by the Company.

If no beneficiary survives the Annuitant, or if any change of beneficiary is made subsequent to the election of an Optional Method of Settlement, such election shall be automatically revoked.

Option 1—Proceeds on Deposit at Interest— Such proceeds may be left on deposit with the Company for such period as may be elected, not to exceed thirty years nor for a longer period than the lifetime of the beneficiary. Annually while the proceeds are on deposit the Company will pay interest thereon to the beneficiary at a guaranteed rate of two and one-half per cent per annum, and at the end of said period will pay the amount then on deposit in the manner set out in the endorsement.

Option 2—Income of a Specified Amount— Such proceeds plus interest at a guaranteed rate of two and one-half per cent per annum on the successive unpaid balances thereof, may be applied to the payment of an annual, semiannual, quarterly or monthly income of a specified amount until the proceeds so applied are exhausted; provided, however, that the aggregate amount of income payable each year shall not be less than $50 for each $1000 so applied.

Option 3—Income for a Specified Period—Such proceeds may be applied to the payment of an annual, semiannual, quarterly or monthly income for such fixed period as may be elected, but not exceeding thirty years. The amount of such income payment shall be that shown in Table A for the fixed period elected. Said income payments are based upon a guaranteed rate of interest of two and one-half per cent per annum, which interest is included in the amounts shown in the table.

Option 4—Income for a Guaranteed Minimum Period and Life Thereafter—Such proceeds may be applied to the payment of a monthly income for a period of ten, ~~fifteen~~ or twenty years certain as may be elected, and for as long thereafter as the beneficiary shall live. The amount of such monthly income payment shall be that shown in Table B for the sex and age of the beneficiary, nearest birthday, at the time the first payment becomes due. Said income payments are based upon a guaranteed rate of interest of two and one-half per cent per annum, which interest is included in the amounts shown in the table. The income under this option instead of being paid monthly may be paid in equivalent annual, semiannual or quarterly payments determined by multiplying the corresponding monthly payments in Table B by 11.865 for the annual payment, by 5.969 for the semiannual payment, and by 2.994 for the quarterly payment.

ELECTION BY BENEFICIARY—If at the time of death of the Annuitant, the proceeds become payable to the beneficiary in one sum, the Annuitant having made no direction for any other manner of payment, the beneficiary may then elect to have the proceeds paid under any one of the foregoing options.

GENERAL CONDITIONS—Unless otherwise specified in the endorsement of an Optional Method of Settlement, the following provisions shall apply:

Payments under Options 2, 3 and 4 when elected by the Insured shall commence as of the date of death of the Insured, subject to receipt, at the Company's home office, of due proof thereof.

If, after the proceeds have been applied under any option, the last surviving beneficiary shall die before all payments provided for herein have been made, any amount then remaining on deposit with the Company under Options 1 or 2, or the commuted value of any unpaid installments certain under Options 3 or 4 at the rate of interest specified in the options, will be paid in one sum to the estate of such last surviving beneficiary.

OPTIONAL METHODS OF SETTLEMENT (Continued)

If the net amount of policy proceeds applied for the benefit of any one beneficiary under any one option is less than $1,000.00, the Company shall have the right to pay such net amount immediately in one sum to the beneficiary designated to receive the first payment on account thereof, in lieu of making payment in the manner provided in said option.

If the periodical payment to any one payee would be less than $25.00, the Company shall have the right to defer such periodical payments until the amount due is not less than $25.00.

The beneficiary shall not have the right to withdraw, assign, anticipate or commute any sum payable under an option elected by the Annuitant unless such right has been therein provided by the Annuitant and approved by the Company.

The amount retained by the Company under any option shall be and remain a part of the general funds of the Company without any requirement of segregation or separate investment.

These options may not be elected for the benefit of a corporation, partnership, association, trustee, executor, administrator, or other fiduciary, or by an assignee, except with the approval of the Company.

TABLE A—OPTION 3
Income Payments per $1,000 Applied

Fixed Period of Years Elected	Amount of Each Income Payment If Payable Annually	If Payable Semiannually	If Payable Quarterly	If Payable Monthly
1	$1000.00	$503.09	$252.32	$84.28
2	506.17	254.65	127.72	42.66
3	341.60	171.85	86.19	28.79
4	259.33	130.47	65.43	21.86
5	210.00	105.65	52.99	17.70
6	177.12	89.11	44.69	14.93
7	153.65	77.30	38.77	12.95
8	136.07	68.46	34.33	11.47
9	122.40	61.58	30.88	10.32
10	111.47	56.08	28.13	9.39
11	102.54	51.59	25.87	8.64
12	95.11	47.85	24.00	8.02
13	88.83	44.69	22.41	7.49
14	$83.45	$41.98	$21.06	$7.03
15	78.80	39.64	19.88	6.64
16	74.73	37.60	18.86	6.30
17	71.15	35.79	17.95	6.00
18	67.97	34.19	17.15	5.73
19	65.13	32.77	16.43	5.49
20	62.58	31.48	15.79	5.27
21	60.28	30.33	15.21	5.08
22	58.19	29.27	14.68	4.90
23	56.29	28.32	14.20	4.74
24	54.55	27.44	13.76	4.60
25	52.95	26.64	13.36	4.46
30	46.61	23.45	11.76	3.93

TABLE B—OPTION 4
Monthly Income Payments per $1,000 Applied

Attained Age of Payee nearest birthday when first Payment Due		Monthly Life Income		
Male	Female	10 yrs. certain	15 yrs. certain	20 yrs. certain
	15*	2.71	2.70	2.70
	16	2.73	2.72	2.71
	17	2.74	2.74	2.73
	18	2.76	2.76	2.75
	19	2.78	2.78	2.77
15*	20	2.81	2.80	2.79
16	21	2.83	2.82	2.81
17	22	2.85	2.84	2.84
18	23	2.88	2.87	2.86
19	24	2.90	2.89	2.88
20	25	2.93	2.92	2.91
21	26	2.95	2.95	2.93
22	27	2.98	2.97	2.96
23	28	3.01	3.00	2.99
24	29	3.04	3.03	3.02
25	30	3.08	3.07	3.05
26	31	3.11	3.10	3.08
27	32	3.14	3.13	3.11
28	33	3.18	3.17	3.15
29	34	3.22	3.20	3.18
30	35	3.26	3.24	3.22
31	36	3.30	3.28	3.25
32	37	3.34	3.32	3.29
33	38	3.39	3.36	3.33
34	39	3.43	3.41	3.37
35	40	3.48	3.45	3.41
36	41	3.53	3.50	3.45
37	42	3.59	3.55	3.50
38	43	3.64	3.60	3.54
39	44	3.70	3.65	3.59
40	45	3.76	3.71	3.64
41	46	3.82	3.77	3.69
42	47	3.88	3.82	3.74
43	48	3.95	3.88	3.79
44	49	4.02	3.95	3.84
45	50	4.09	4.01	3.90
46	51	4.17	4.08	3.95
47	52	4.25	4.15	4.01
48	53	4.33	4.22	4.07
49	54	4.42	4.29	4.12
50	55	4.50	4.37	4.18
51	56	4.60	4.44	4.24
52	57	4.69	4.52	4.30
53	58	4.79	4.60	4.36
54	59	4.90	4.69	4.41
55	60	5.01	4.77	4.47
56	61	5.12	4.86	4.53
57	62	5.23	4.94	4.59
58	63	5.35	5.03	4.64
59	64	5.48	5.12	4.70
60	65	5.61	5.21	4.75
61	66	5.74	5.30	4.80
62	67	5.87	5.39	4.85
63	68	6.01	5.48	4.90
64	69	6.16	5.56	4.94
65	70	6.30	5.65	4.98
66	71	6.45	5.73	5.02
67	72	6.60	5.82	5.05
68	73	6.76	5.90	5.09
69	74	6.91	5.97	5.12
70	75	7.07	6.05	5.14
71	76	7.23	6.12	5.17
72	77	7.38	6.18	5.19
73	78	7.54	6.24	5.20
74	79	7.69	6.30	5.22
75	80	7.84	6.35	5.23
76	81	7.98	6.39	5.24
77	82	8.13	6.43	5.25
78	83	8.26	6.47	5.26
79	84	8.39	6.50	5.26
80	85	8.51	6.53	5.27
81	and over	8.63	6.55	5.27
82		8.73	6.57	5.27
83		8.83	6.59	5.27
84		8.92	6.60	5.27
85 and over		9.00	6.61	5.27

*Ages under 15 same as Age 15.

Application to the UNITED BENEFIT LIFE INSURANCE COMPANY for a Flexible Fund Annuity

Section A. The Proposed Annuitant

1. Full name — First: John — Middle: — Last: Ublic
2. Residence address: 1234 State Street
   City: Omaha — State: Nebraska
3. Occupation: Attorney
4. Place of birth: Nebraska
5. Sex: Male
6. Birth date: 3-30-29
7. Age: 35
8. Marital status: Married
9. Former addresses over last two years:
10. Name and address of employer: Self-employed

Section B. The Annuity

1. Maturity date or age: June 1, 1994
2. Annuity option: A
3. Mode of premium payment
   Annually ☐ Semiannual ☐
   Quarterly ☐ BSP ☒
4. Amount of premium
   $ 100.00

Section C. The Beneficiary

Name and relationship of beneficiary. (The right to change the beneficiary is reserved.)

Mary Ublic, wife

Section D. Remarks

This space reserved for Home Office use.

I declare that the answers in this application are, to the best of my knowledge, true and complete, and agree that:

1. The Company is not bound by any statements made by or to any agent unless such statements are written in this application.
2. I have been furnished with, and have read, the brochure describing the Flexible Fund Annuity.
3. I understand that the growth of the fund arising from my deposits is not guaranteed, but will depend upon the investment results of the securities purchased for this segregated fund.
4. If the applicant is other than the proposed annuitant, any policy issued on the basis of this application shall be owned by the applicant.

I have paid $_____ premium with this application. Date June 1, 1964.

Signed at Omaha, Nebraska

General Agent

Witness (Soliciting Agent)

Proposed Annuitant

Applicant (If other than Proposed Annuitant)

No. 2047 Agent's Number

Annual Premium FLEXIBLE FUND Retirement Annuity.
Minimum Return Guaranteed on Death or Surrender Before Maturity.
Premiums Payable Until Maturity Date or Until Prior Death.
Nonparticipating.

United **OF OMAHA**

HOME OFFICE — OMAHA, NEBRASKA

THIS POLICY IS ONE OF YOUR MOST VALUABLE POSSESSIONS.
WHEN SOMEONE IS COUNTING ON YOU, YOU
CAN COUNT ON THIS POLICY. ANY TIME WE
CAN BE OF SERVICE TO YOU, PLEASE LET US KNOW.

FLEXIBLE FUND ANNUITY

United OF OMAHA

N. M. Longworth, President
United of Omaha

You now have the opportunity to participate in a savings and retirement plan never before offered by any company.

The Flexible Fund Annuity is unique because it combines the *opportunity* to share in the growth of our economy with the traditional *guarantees* inherent in life insurance policies.

Your savings are invested in common stocks, as well as in bonds and other guaranteed interest investments.

These securities, particularly the common stocks, provide the growth factor so important to you during your "savings years." Of course, we cannot guarantee that the value of the stock will grow. That depends on the companies selected, the general economy, and many other factors. But the investments for the Fund are selected for quality and growth potential and with the care traditional to the life insurance business.

And most important, your Flexible Fund Annuity has certain guaranteed values similar to other life insurance policies. These guarantees protect your savings against wide fluctuations in the value of the securities. Add to this the option of a guaranteed annuity at retirement and you have a savings and retirement plan with growth potential and security.

The Flexible Fund Annuity has been developed after thorough study and will, we believe, prove an ideal plan for those who wish the opportunity for substantial growth in their savings and still be protected from serious long-term loss.

N. M. Longworth

This brochure has been prepared to help give a complete understanding of the Flexible Fund Annuity. No representations regarding the Flexible Fund Annuity other than those contained in this brochure and in the policy should be relied upon as having been authorized by the Company.

A New Approach to Financial Security

Experts say three steps are necessary to build a balanced and adequate estate. They are (1) save, (2) insure, (3) invest, and in that order. Usually, a person sets out to accomplish each of these objectives one at a time, but seldom gets past one of the three. There are many possible reasons for this failure, but usually it comes from lack of planning, knowledge, or time. Now, a new idea has been developed that combines these three essential steps into *one simple plan!*

What is the FLEXIBLE FUND ANNUITY?

United of Omaha's Flexible Fund Annuity features a method of accumulation modernized to keep pace with today's living. Net premiums go into a separate fund which can be invested largely in common stocks. Thus, it gives the policyowners the opportunity for a greater return on the accumulated deposits and a chance to share in the growth of the country's economy.

The Flexible Fund Annuity combines this new method of accumulation with the time-tested advantages of a lifetime annuity. An annuity *available only through life insurance companies,* is basically a savings and accumulation plan that guarantees a lifetime income at maturity. Special advantages of an annuity found in the Flexible Fund Annuity are:

1. GUARANTEED MINIMUM VALUES

While the policyowners will share in any growth of the Fund, guaranteed minimum values offer protection against serious long-term loss.

2. LIFETIME INCOME OF A FIXED AMOUNT

The Flexible Fund Annuity has the additional attraction of guaranteeing at maturity an income of a fixed amount that *can never be reduced nor outlived.* The value of this policy will fluctuate during the premium-paying period as the economy of the country fluctuates; however once the retirement income feature begins, future fluctuations of the economy will have no effect upon it.

How does the FLEXIBLE FUND ANNUITY work?

NET PREMIUMS

Sales and service charges are deducted from the premiums paid for the Flexible Fund Annuity. The balance is called a net premium. Net premiums will be credited to a "Flexible Fund" account separate from all other assets of the company. Net premiums for this policy are defined as:

First policy year:	50% of regular policy premiums
Second through 10th policy years:	90.5% of regular policy premiums
11th and subsequent policy years:	95% of regular policy premiums

Since most of the sales and service charges are deducted from early payments, stopping the plan soon after starting could result in a loss. Over a 25-year period, however, the net premiums will be 91.58% of the total policy premiums.

PREMIUM ACCUMULATION

Net premiums are accumulated monthly at a rate determined by the experience of the Fund, including interest, dividends, and changes in market value. After allowance for Company income taxes, a monthly charge of only *83/1000 of 1%* of the Fund is made to provide for investment management and mortality costs.

Once a year after the first policy anniversary, a statement will be mailed to each policyowner showing the investment results of the Fund and the amount accumulated to the credit of his policy.

UNPAID PREMIUMS

Unpaid premiums may be paid within three years provided the policy has not been previously turned in for cash.

PARTIAL WITHDRAWALS

Occasionally, a policyowner might need cash for emergencies. Accordingly, partial withdrawals from his policy may be made. Repayments of such withdrawals can be made anytime within one year after the date of withdrawal. The money withdrawn will not participate in the Fund until it is repaid; however, no interest will be charged.

Greater Potential Return
with Protection Against Loss!

Guaranteed Minimum Values

Regardless of the performance of the Fund, *guaranteed minimum values* are provided in each policy. After premiums have been paid for 10 years, the Company guarantees a minimum value equal to the sum of the net premiums. If premiums have been paid for less than 10 years, the minimum value is a graded increasing percentage of the net premiums.

DEATH BENEFIT

In the event of death before the maturity date, the Company will pay as a death benefit to the beneficiary either the accumulated value of the policy or the total of all regular policy premiums paid, whichever is the larger.

This money can be paid as a single sum payment or, if so desired, in other ways, such as interest payments, monthly installments, or a lifetime income.

Guaranteed Annuity at Maturity

At maturity, or earlier, a guaranteed lifetime income can be selected. The policyowner can choose how this lifetime income will be paid to him from the following three options:

Option A: *Monthly income for life*—if the policyowner should die before 120 monthly payments have been made to him, the balance of the 120 payments will be continued to his beneficiary.

Option B: *Monthly income for life* — with no guaranteed minimum number of monthly payments.

Option C: *Monthly income for life*—if the policyowner should die before the total of the monthly payments made to him equals the cash value of his policy at maturity, payments will be continued to his beneficiary until the total equals such cash value.

The amount of monthly income will vary according to the option chosen.

How Are the Investments Handled?

INVESTMENT MANAGEMENT

Management of the Flexible Fund is the responsibility of United of Omaha's Board of Directors and Investment Committee. The Investment Committee consists of professional investment men who for years have had the responsibility for the investment of millions of dollars of the Company's assets. The Board and Committee use the research and advisory services of the finest investment specialists in the country. Authorization and purchase of selected securities are approved by the Investment Committee and the Board of Directors in the same manner as all other investments made by the Company.

Ownership of a Flexible Fund Annuity gives you the Benefit of full-time professional investment management

INVESTMENT POLICY

The investment policy applied to the Flexible Fund is based on a proper balance of growth and stability — safety and income. The over-all philosophy is to provide maximum return — combining value and income — with maximum safety.

It is our policy to invest as much as possible in common stocks consistent with the above philosophy; that is, the major part in common stocks and the smaller part in fixed rate investments. The ratio of common stocks to total investments may increase or decrease from time to time as conditions dictate.

The common stocks purchased are chosen for high quality with emphasis on those having strong potential for long-term growth in earnings and values.

Investment management for the Flexible Fund adheres to these sound investment principles and methods:

1. **All investments for the Fund are limited to those which qualify under Nebraska State Law for life insurance company investment.**
2. **Investments are diversified among different companies and industries.**
3. **Funds are kept fully invested. "Dollar cost averaging" principles are applied, thus giving diversification over time.**
4. **No purchases are made on margin.**
5. **Investments in the Fund are continually reviewed and changed when desirable or necessary.**
6. **Purchases and sales of investments are made only to carry out the long-range investment program of the Flexible Fund and not for trading purposes or speculation.**

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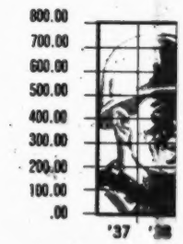

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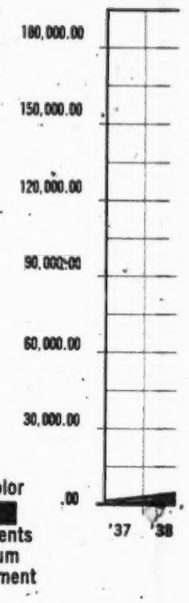

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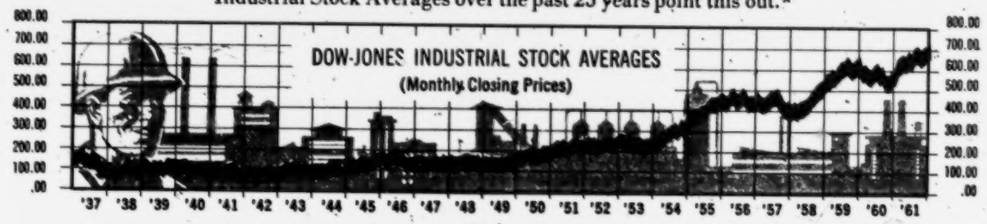
…nually reviewed and …

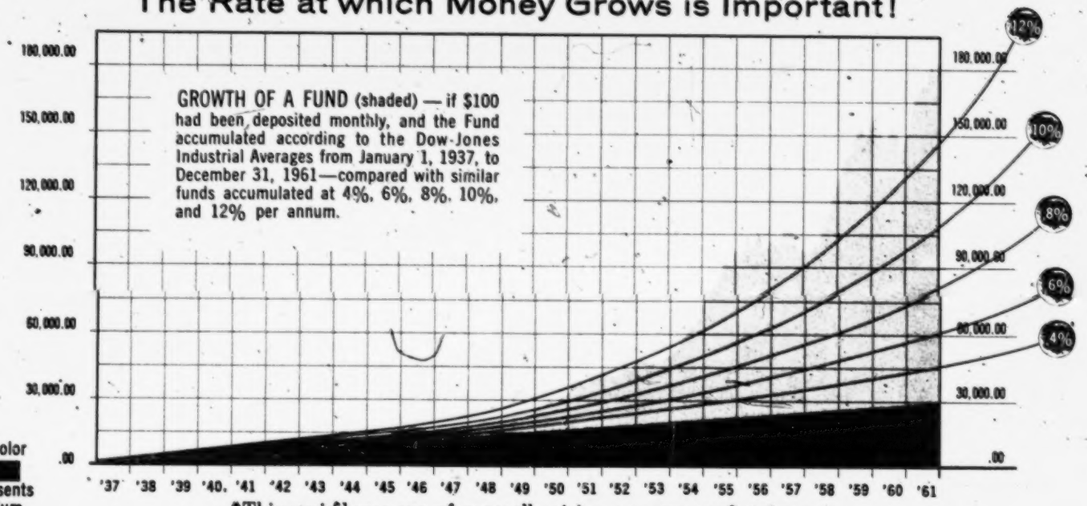
…re made only to carry …n of the Flexible Fund …lation.

What has been the History of Common Stock Investments?

Almost everyone has been aware of the upward trend of the stock market in recent times. These charts of the Dow-Jones Industrial Stock Averages over the past 25 years point this out.*



The Rate at which Money Grows is Important!



*This period was one of generally rising common stock prices. The results shown should not be considered as a representation of the dividend income or capital gain or loss which may be realized from investments made today.

WHAT IF STOCK VALUES GO DOWN?

While the long-term trend of the stock market and of the country's economy in general has been upward, periodic downward trends must be recognized. It is possible for the accumulated value of a Flexible Fund Annuity to go down as well as up. (This would be tempered, of course, by the accumulation of compounded investment income.) To lessen the impact of any unusual, prolonged downward trend of the stock market, United of Omaha guarantees that after premiums have been paid for 10 full years *the value of a Flexible Fund Annuity policy can never be less than the sum of the net premiums invested in the fund.*

While the Flexible Fund Annuity is designed as a long-term accumulation plan, circumstances will occasionally arise whereby a policyowner will stop his plan before the maturity date. Regardless of the value of the fund at that time, United of Omaha guarantees that the value of his policy can never be less than the following percentages of the *net premiums:*

PREMIUMS PAID FOR	
one full year	50%
two full years	55%
three full years	60%
four full years	65%
five full years	70%
six full years	75%
seven full years	80%
eight full years	85%
nine full years	90%
ten full years	100%

Why is it so Important that this be a LONG RANGE PLAN ? ? ?

TIME

is necessary to get the full benefit from:

1. "Dollar cost averaging" principles
2. Compounding interest and dividends
3. Long-term growth of the economy

WHAT IS "DOLLAR COST AVERAGING" ?

This is simply a method of investing that has been practiced for many years by experienced professional investors to help get the best results from long-term trends in the stock market. It consists of continuously investing at regular intervals over a reasonably long period the *same amount of money* in common stocks *regardless of price levels.* Some stocks will be purchased at lower prices and some at higher prices. Since the same number of dollars will always be invested, more shares will be received when they cost less and fewer shares when they cost more. The over-all result will be that the average cost a share will be lower than the average of all the prices at which the shares were purchased.

Your regular premium payments for the Flexible Fund Annuity make "Dollar cost averaging" principles work for you.

this is the first policy of its kind to be issued by any company!

How Can You Select a Lifetime Income at Maturity?

You have the guaranteed right at maturity, or earlier, to select one of three lifetime income plans. (In fact, we ask that you make an initial selection at the time you start your plan.) The values of these plans *can never be reduced* despite the fact that people may be living longer at the time you may wish to start your retirement program.

The following examples show the guaranteed monthly income at age 65 for *each $10,000* of accumulated cash value at maturity:

	Male Policy-owner	Female Policy-owner
Option A — Monthly Income for life (120 months guaranteed)	$63.00	$56.10
Option B — Monthly Income for life (no guarantee)	$69.70	$59.70
Option C — Monthly Income for life (cash value guaranteed)	$57.00	$50.80

What is the Federal Income Tax Situation* for the owner of a Flexible Fund Annuity?

Because capital gains, as well as earnings, are retained in the Fund, there is *no tax* to the policyowner during the accumulation period. However, if the policy is turned in for its cash value, any excess of such value over the total amount of regular policy premiums paid will be taxed as ordinary income. In the event the policyowner should die prior to the maturity date, there is no income tax on the money paid the beneficiary until that amount exceeds the sum of the premiums paid; then the excess would be includable in the beneficiary's gross income.

At maturity the ratio of the regular premiums paid for this policy to the total expected return is calculated. Only the excess of each annuity payment over the excludable amount so determined is taxable income. Under usual circumstances the owner of a Flexible Fund Annuity is in a reduced tax bracket after retirement and has a double exemption after age 65, so taxes on his annuity should be very low.

*Based on present tax laws.

Age Limits

The maximum age for beginning the plan is 60 years. There is no minimum age limit.

Premium Payment

Deposits may be made on an annual, semiannual, or quarterly basis. Regular notices act as a reminder when deposits are due.

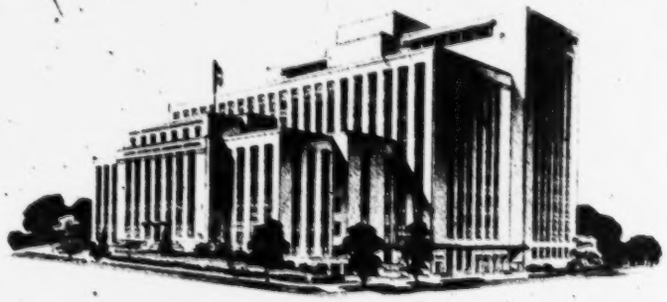
For additional convenience, deposits can be made automatically each month through United of Omaha's Bank Service Plan.

The minimum deposit is $300 a year, or $25 a month. The maximum is $6,000 a year, or $500 a month.

Optional Maturity Date

The minimum period of accumulation is ten years. After 10 years, the policyowner may choose either an earlier, or later, maturity date than initially selected. However, the maturity date can never be changed to a date later than the policy anniversary nearest the policyowner's 70th birthday.

Who Stands Behind the Flexible Fund Annuity?



Home Office • United Benefit Life Insurance Company

The Flexible Fund Annuity is backed by the reputation and the resources of United of Omaha, one of the fastest growing major life insurance companies in the country. Incorporated in the State of Nebraska in 1926, United of Omaha has grown to over two and one-half billion dollars of insurance in force with assets in excess of $400,000,000. It was recently listed in Fortune Magazine as the 16th largest stock life insurance company in the United States.

The well-known authority of the insurance industry, Alfred M. Best Company, Inc., gives United of Omaha top rating for financial stability.

PLAINTIFF'S EXHIBIT NO. 5
(pp. 1, 3, 4, 9, 16)

A STRONG AND RESPECTED COMPANY STANDS BEHIND THIS *DYNAMIC PLAN!*

Home Office — Omaha, Nebraska

UNITED OF OMAHA

A MAJOR FINANCIAL INSTITUTION. ONE OF THE FASTEST GROWING LIFE INSURANCE COMPANIES IN THE WORLD. RANKS IN THE TOP 4% OF ALL LIFE INSURANCE COMPANIES. OVER $2,500,000,000 IN-SURANCE IN FORCE. ASSETS OF OVER $400,000,000.

OF ITS FINANCIAL STABILITY:

Standard Analytical Service Insurance Report, in comparing United with the 25 largest companies, says: "The comparative analysis made . . . in our opinion is very favorable. . . . We believe it (United of Omaha) to be a reliable institution, and it warrants public confidence."

Best's Life Insurance Report says: "The results achieved by the company (United of Omaha) have been most favorable. In our opinion it has most substantial over-all margins for contingencies. We recommend this Company."

United **OF OMAHA has offices in principal cities throughout the United States, Canada, Puerto Rico, Panama, the Canal Zone and Europe.**

22

United OF OMAHA — *first with the*

The Flexible Fund Annuity provides features never before combined in a single plan.

1. OPPORTUNITY FOR GROWTH

a. Interest earnings compounded through reinvestment
b. Dividend earnings compounded through reinvestment
c. Appreciation in values

2. TAX ADVANTAGES

a. No personal income tax on your accumulations to maturity
b. Taxed as an annuity at retirement

3. TRADITIONAL LIFE INSURANCE GUARANTEES

a. Guaranteed minimum cash values
b. Guaranteed annuity income — an income that cannot be outlived
c. Guaranteed death benefit during accumulation period — return of premiums or accumulated values (whichever is greater)

IF YOU AGREE THIS IS THE BEST PLAN YOU HAVE EVER SEEN FOR ACCOMPLISHING YOUR LONG-RANGE MONEY OBJECTIVES, HOW MUCH COULD YOU SAVE EACH MONTH?

Monthly

☐ $25.00 ☐ $50.00 ☐ $100.00 ☐ $200.00 ☐ $_____

NOW...*LET'S SEE WHAT YOUR POTENTIAL IS:*

FFA INVESTMENTS

Listed below are stocks and bonds initially purchased for the Fund...

COMMON STOCKS

American Can
American Telephone & Telegraph
Armstrong Cork
Bristol-Myers
Commonwealth Edison (Illinois)
Dow Chemical
Du Pont (E. I.) de Nemours
Eastman Kodak
General Electric
General Foods
General Motors
Goodyear Tire & Rubber
Gulf Oil
International Business Machines
International Paper
Merck
Minneapolis-Honeywell Regulator
Minnesota Mining and Manufacturing
National Cash Register
Reynolds (R. J.) Tobacco
Sears, Roebuck
Southern California Edison
Standard Brands
Standard Oil of Indiana
Standard Oil of New Jersey
Texas Utilities
Virginia Electric & Power

BONDS

United States Treasury
Aluminum Company of America
Caterpillar Tractor
C.I.T. Financial Corporation
Cleveland Electric Illuminating
Consolidated Edison of New York
Houston Lighting and Power
Pacific Telephone & Telegraph
Procter & Gamble
Standard Oil of California
Texas Co. (Texaco)
United States Steel

Holdings of the Flexible Fund Annuity will change from time to time as market conditions warrant.

Ownership of a Flexible Fund Annuity gives you full-time professional investment management which adheres to sound principles and methods, for example:

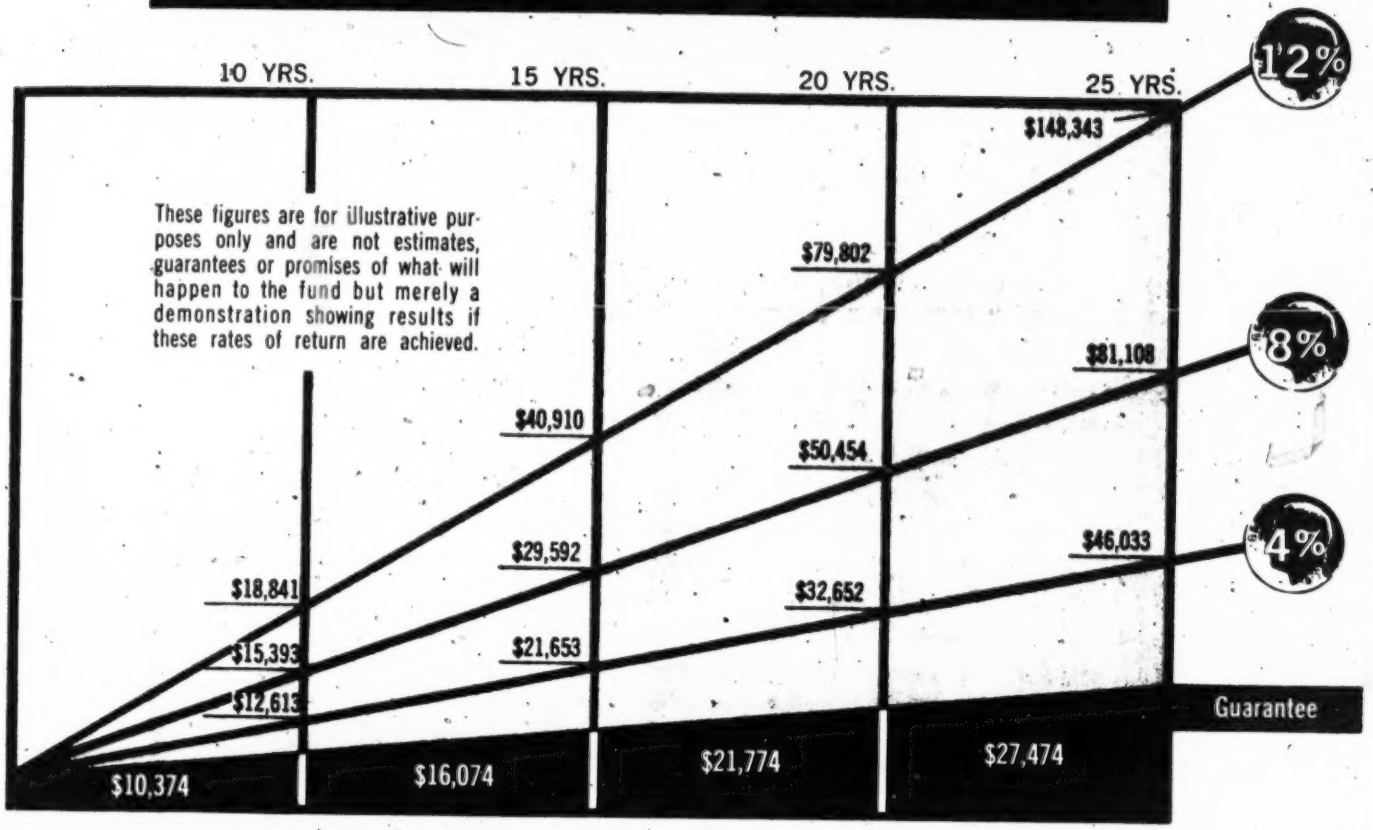
DIVERSIFICATION – Investments will be spread among industries and among companies within industries.

QUALITY – Investments will be limited to those qualifying under Nebraska state law for life insurance company investment.

FUNDS KEPT FULLY INVESTED – Constant investing and reinvesting give the policyowner the full impact of compounding of earnings.

LONG-RANGE OBJECTIVES – Purchases and sales of investments will be made only to carry out the long-range investment program of the Flexible Fund and not for trading purposes or speculation.

NO ONE CAN ACCURATELY PREDICT WHAT THE ECONOMY WILL DO. YOUR VALUES IN THE FFA AT ANY GIVEN TIME WILL DEPEND UPON THE PERFORMANCE OF THE FUND. THEY CANNOT, HOWEVER, BE LESS THAN THE GUARANTEED CASH VALUE AS SHOWN.



Flexible Fund Annuity Figures Based on Deposit of $100.00 a month.

IF YOU LIVE:

The Flexible Fund Annuity provides a minimum guarantee of $_____ at age 65 which may be used to provide a guaranteed retirement income of $_____. If the Fund returns at _____%, you would have a cash fund of $_____ at age 65 which may be used to provide a guaranteed retirement income of $_____.

IF YOU DIE:

Your family will receive a return of all your deposits or your accumulated value of the Fund, whichever is higher, upon death before maturity.

IF YOU QUIT:

You may allow your accumulated value (as defined in the policy) to participate in the Fund or you may withdraw it in cash. This amount can never be less than the written guarantees.

GREATER POTENTIAL RETURN...with protection against loss!

FLEXIBLE FUND ANNUITY $100 MONTHLY PREMIUM

Accumulated Fund at Age 65* and Monthly Income for 10 Years Certain and Life that Would Be Provided by that Fund

ISSUE AGE	MINIMUM GUARANTEE			4% EARNINGS RATE			8% EARNINGS RATE			12% EARNINGS RATE			ADDITIONAL PREMIUM FOR $100.00 I.E.B. WITHOUT WAIVER †	
	FUND AT 65	MALE INCOME	FEMALE INCOME	FUND AT 65	MALE INCOME	FEMALE INCOME	FUND AT 65*	MALE INCOME	FEMALE INCOME	FUND AT 65	MALE INCOME	FEMALE INCOME	ANNUAL	BSP
20	$ 50,274	$ 316.73	$ 282.04	$ 135,543	$ 853.92	$ 760.40	$ 432,445	$2,724.40	$2,426.02	$1,518,344	$9,565.97	$8,517.91	$108.90	$ 9.70
21	49,134	309.54	275.64	129,210	814.02	724.87	399,311	2,515.66	2,240.13	1,354,581	8,533.86	7,599.20	111.00	9.90
22	47,994	302.36	269.25	123,121	775.66	690.71	368,632	2,322.38	2,068.03	1,208,364	7,612.69	6,778.92	113.40	10.10
23	46,854	295.18	262.85	117,265	738.77	657.86	340,225	2,143.42	1,908.66	1,077,814	6,790.23	6,046.54	116.30	10.30
24	45,714	288.00	256.46	111,635	703.30	626.27	313,922	1,977.71	1,761.10	961,251	6,055.88	5,392.62	120.00	10.60
25	44,574	280.82	250.06	106,222	669.20	595.91	289,568	1,824.28	1,624.48	857,177	5,400.22	4,808.76	124.80	11.10
26	43,434	273.63	243.66	101,017	636.41	566.71	267,017	1,682.21	1,497.97	764,253	4,814.79	4,287.46	131.80	11.70
27	42,294	266.45	237.27	96,012	604.88	538.63	246,137	1,550.66	1,380.83	681,286	4,292.10	3,822.01	139.40	12.30
28	41,154	259.27	230.87	91,199	574.55	511.63	226,804	1,428.87	1,272.37	607,208	3,825.41	3,406.44	147.60	13.00
29	40,014	252.09	224.48	86,572	545.40	485.67	208,903	1,316.09	1,171.95	541,067	3,408.72	3,035.39	156.50	13.80
30	38,874	244.91	218.08	82,122	517.37	460.70	192,328	1,211.67	1,078.96	482,013	3,036.68	2,704.98	166.10	14.60
31	37,734	237.72	211.69	77,844	490.42	436.70	176,981	1,114.98	992.86	429,286	2,704.50	2,408.28	169.40	14.90
32	36,594	230.54	205.29	73,730	464.50	413.63	162,770	1,025.45	913.14	382,208	2,407.91	2,144.19	172.70	15.20
33	35,454	223.36	198.90	69,775	439.58	391.44	149,613	942.56	839.33	340,174	2,143.10	1,908.38	172.30	15.20
34	34,314	216.18	192.50	65,971	415.62	370.10	137,429	865.80	770.98	302,644	1,906.66	1,697.83	175.60	15.50
35	33,174	209.00	186.11	62,314	392.58	349.58	126,149	794.74	707.70	269,135	1,695.55	1,509.85	178.90	15.70
36	32,034	201.81	179.71	58,798	370.43	329.86	115,704	728.94	649.10	239,216	1,507.06	1,342.00	182.30	16.00
37	30,894	194.63	173.32	55,417	349.13	310.89	106,032	668.00	594.84	212,503	1,338.77	1,192.14	185.90	16.40
38	29,754	187.45	166.92	52,165	328.64	292.65	97,077	611.59	544.60	188,652	1,188.51	1,058.34	184.20	16.20
39	28,614	180.27	160.52	49,039	308.95	275.11	88,786	559.35	498.09	167,356	1,054.34	938.87	187.50	16.50
40	27,474	173.09	154.13	46,033	290.01	258.25	81,108	510.98	455.02	148,343	934.56	832.29	190.80	16.80
41	26,334	165.90	147.73	43,143	271.80	242.03	73,999	466.19	415.13	131,366	827.61	736.96	194.10	17.10
42	25,194	158.72	141.34	40,364	254.29	226.44	67,417	424.73	378.21	116,208	732.11	651.93	197.40	17.30
43	24,054	151.54	134.94	37,692	237.46	211.45	61,323	386.33	344.02	102,674	646.85	576.00	193.60	17.00
44	22,914	144.36	128.55	35,122	221.27	197.03	55,679	350.78	312.36	90,591	570.72	508.22	196.30	17.30
45	21,774	137.18	122.15	32,652	205.71	183.18	50,454	317.86	283.05	79,802	502.75	447.69	199.00	17.50
46	20,634	129.99	115.76	30,276	190.74	169.85	45,616	287.38	255.91	70,169	442.06	393.65	201.60	17.70
47	19,494	122.81	109.36	27,992	176.35	157.04	41,136	259.16	230.77	61,568	387.88	345.40	204.20	17.90
48	18,354	115.63	102.97	25,796	162.51	144.72	36,988	233.02	207.50	53,888	339.49	302.31	196.40	17.30
49	17,214	108.45	96.57	23,684	149.21	132.87	33,148	208.83	185.96	47,032	296.30	263.85	197.70	17.40
50	16,074	101.27	90.18	21,653	136.41	121.47	29,592	186.43	166.01	40,810	257.73	229.51	198.80	17.50
51	14,934	94.08	83.78	19,700	124.11	110.52	26,299	165.68	147.54	35,444	223.30	198.84	199.80	17.60
52	13,794	86.90	77.38	17,823	112.28	99.99	23,250	146.48	130.43	30,563	192.55	171.46	200.50	17.60
53	12,654	79.72	70.99	16,018	100.91	89.86	20,427	128.69	114.60	26,306	165.10	147.02	185.80	16.30
54	11,514	72.54	64.59	14,282	89.98	80.12	17,813	112.22	99.93	22,315	140.58	125.19	184.20	16.20
55	10,374	65.36	58.20	12,613	79.46	70.76	15,393	96.98	86.35	18,841	118.70	105.70	182.10	16.00
56	14,934	105.58	94.08	19,700	139.28	124.11	26,299	185.93	165.68	35,444	250.59	223.30	289.60	25.30
57	13,794	97.52	86.90	17,823	126.81	112.28	23,250	164.38	146.48	30,563	216.08	192.55	291.00	25.50
58	12,654	89.46	79.72	16,018	113.25	100.91	20,427	144.42	128.69	26,306	185.28	165.10	270.80	23.70
59	11,514	81.40	72.54	14,282	100.97	89.98	17,813	125.94	112.22	22,315	157.77	140.58	268.60	23.50
60	10,374	73.34	65.36	12,613	89.17	79.46	15,393	108.83	96.98	18,841	133.21	118.70	265.60	23.30

*For Issue Ages 56 Through 60, Accumulated Fund is at Age 70

† 35 year Plan For Issue Ages 20-30, Coverage to Age 65 For Issue Ages 31-55, and Coverage to Age 70, For Issue Ages 56-60

PLAINTIFF'S EXHIBIT NO. 6

26

New Opportunity for Financial Growth!

United OF OMAHA'S

Flexible Fund Annuity

combines the principles of saving, investing and insuring!

This *one new plan* by United of Omaha may be just what you are looking for to assure your future financial success! Send for the free detailed brochure that describes how the "Fund" is invested in select common stocks and bonds. Read how certain insurance features protect a Flexible Fund Annuity policyowner. Discover the sound principles by which your monthly premiums may multiply into lifetime security!

Lifetime Retirement Income or Lump-sum Cash!

A Flexible Fund Annuity *guarantees* you retirement income based on your premiums. The only thing "flexible" about the Annuity is how much it can grow above and beyond the guaranteed amount! It's a United of Omaha exclusive, and it's designed to offer you the growth opportunity *you need* during your earning years.

take care of your future **TODAY!**

SEND THIS COUPON

for the New FFA Brochure containing complete Information.

United OF OMAHA

UNITED BENEFIT LIFE INSURANCE CO
OMAHA, NEBRASKA

UNITED BENEFIT LIFE INSURANCE CO. Dept. WH-4
3316 FARNAM ST., OMAHA 31, NEBRASKA

Please send me the NEW free brochure containing full information on United of Omaha's Flexible Fund Annuity.

NAME

ADDRESS

AGE ☐ MALE ☐ FEMALE

United
OF OMAHA

OMAHA, NEBRASKA

A STOCK COMPANY

Annuitant	JOHN UBLIC	$338.65	Monthly Income
Date of Issue	JUNE 15, 1964	SPECIMEN	Policy Number

DEFERRED RETIREMENT ANNUITY—Death Benefit Prior to Maturity. Premiums Payable to Maturity. Nonparticipating.

United Benefit Life Insurance Company will pay to the Annuitant the monthly income shown above, beginning on the maturity date, provided the Annuitant is then living and all premiums have been duly paid. Upon receipt of due proof that death of the Annuitant occurred prior to the maturity date and while this policy was in force with all premiums duly paid to the date of death, the Company will pay to the beneficiary the amount of the cash value for the policy year in which death occurred, or of the premiums which have been paid, if greater.

Any amount which may become payable by reason of the death of the Annuitant will be paid to the person or persons named as beneficiary in the application or subsequently designated in accordance with the terms of this policy.

This contract, executed by the United Benefit Life Insurance Company on the date of issue set out above, includes the provisions on the following pages.

Trent P. Hansen
Secretary

N. M. Longworth
President

PREMIUMS

1. CONSIDERATION — The consideration for this policy is the application therefor and the payment of premiums in the amounts and at the times stated on page 3 or until prior death of the Annuitant.

2. MANNER OF PAYMENT — All premiums are payable in advance at the home office of the Company in Omaha, Nebraska, or to an authorized agent on or before the due date, in exchange for the Company's receipt therefor signed by a Vice President. This policy is based on annual premiums, but such premiums may be paid semiannually or quarterly at the Company's published rates.

3. DEFAULT — Failure to pay any premium when due shall constitute a default and shall cause this policy to be null and void, except as herein provided.

4. GRACE PERIOD — A grace period of thirty-one days will be granted for the payment of every premium after the first. This policy will remain in force during the grace period.

5. REINSTATEMENT — At any time within five years after the due date of a premium in default, upon written application by the Annuitant, this policy, unless previously surrendered for its cash value, may be reinstated upon the payment of arrears of premiums with compound interest thereon at the rate of five per cent per annum, and the payment or reinstatement of any indebtedness to the Company existing at the date of such default with interest at like rate from that date.

POLICY CONTRACT

6. ENTIRE CONTRACT — This policy and the application, a copy of which is attached to the policy when issued, constitute the entire contract between the parties hereto. All statements made by the Annuitant shall, in the absence of fraud, be deemed representations and not warranties and no statement made by the Annuitant or on his behalf shall be used to void this policy or in defense of a claim hereunder unless it is contained in the written application.

No change or modification may be made, no forfeiture waived or date of payment of any premium changed, except by agreement in writing signed by the President, Vice President, Assistant Vice President, Secretary or Assistant Secretary of the Company.

7. INCONTESTABILITY — Except for nonpayment of premiums, this policy shall be incontestable after it shall have been in force during the lifetime of the Annuitant for two years from its date of issue.

8. AGE OR SEX — If the age or sex of the Annuitant has been misstated, the amount payable under this policy shall be the amount which the premium paid would have purchased at the correct age and sex, according to the Company's published rates at the time of issue. The Company may require proof of age before making annuity payments hereunder.

PAYMENT OF BENEFITS

9. OWNERSHIP AND CONTROL — If this policy was applied for by someone other than the Annuitant, the applicant shall exercise all rights which would otherwise have been available to the Annuitant.

10. BENEFICIARY — The right to change the beneficiary is reserved by the Annuitant unless such right has been revoked in writing by the Annuitant and acknowledged by the Company. If the right has not been revoked, the Annuitant may change any beneficiary designation by written notice to the Company. Such change will become effective when acknowledged by the Company.

If any beneficiary dies before the Annuitant, the interest of such beneficiary shall vest in the Annuitant unless otherwise provided in the beneficiary designation. The interest of any revocable beneficiary shall be subject to the rights of any assignee.

11. ASSIGNMENT — No assignment of this policy shall be binding upon the Company until a copy thereof is filed with the Company at its home office. The Company will not assume responsibility for the validity of any assignment.

12. INDEBTEDNESS — Any indebtedness to the Company secured by this policy, including any unpaid portion of the premium for the policy year current at death, will be deducted from any payment or payments or in any settlement under this policy. If there be any indebtedness on this policy on the due date of the first monthly payment, the monthly payments otherwise available shall each be reduced in the proportion that such indebtedness bears to the then cash value of this policy, and the indebtedness will thereby be canceled.

POLICY DATA

Anniversary dates, policy years and premium periods are computed from the Date of Issue.

ANNUITANT	JOHN UBLIC	$338.65	MONTHLY INCOME
Date of Issue	JUNE 15, 1964	SPECIMEN	Policy Number
AGE AT ISSUE	35	Sex MALE	
AGE AT MATURITY	65		
MATURITY DATE	JUNE 15, 1994		
ANNUITY OPTION	A, AS DESCRIBED IN SECTION 15		

SCHEDULE OF BENEFITS

Form	Benefit	Premium	Years Payable
523-140L	ANNUITY	$1,176.47	30
	TOTAL ANNUAL PREMIUM	$1,176.47	

MONTHLY BANK SERVICE PLAN PREMIUM $100.00 PAYABLE AS OF THE DATE OF ISSUE AND EACH MONTH THEREAFTER FOR THE PERIOD STATED.

13. DEFERMENT — The payment of a cash value, or the granting of a policy loan other than for the payment of premiums, may be deferred, at the option of the Company, for a period not exceeding six months after application therefor.

14. OPTIONAL MATURITY DATES — On any anniversary prior to the maturity date shown on page 3, the Annuitant may, upon written request accompanied by the policy for endorsement, elect an earlier maturity date and have the cash value as of such date, less the amount of any indebtedness secured by this policy, applied to the purchase of a monthly income beginning on such date in accordance with one of the Annuity Options set out below.

Prior to the time the first monthly income payment is made, the Annuitant may elect a later maturity date. On such later maturity date, the then cash value less any indebtedness secured by this policy will be applied to purchase a monthly income in accordance with one of the Annuity Options set out below.

15. ANNUITY OPTIONS — At any time prior to the date of the first monthly income payment, the Annuitant may elect one of the other Annuity Options described below in lieu of the option originally selected as indicated on page 3.

Option A. Life Annuity, 120 months guaranteed. Equal monthly payments shall be made for a minimum guaranteed period of 120 months and for as long thereafter as the Annuitant lives. If the Annuitant dies before monthly payments have been made for the said minimum period, monthly payments will be continued for the remainder of said minimum period to the beneficiary.

Option B. Life Annuity. Equal monthly payments shall be made for the life of the Annuitant, and shall terminate with the last payment preceding death of the Annuitant.

Option C. Installment Refund Annuity. Equal monthly payments shall be made for the life of the Annuitant with a minimum guarantee that should the Annuitant die before the sum of all monthly payments made equals or exceeds the net cash value applied to the purchase thereof, the monthly payments will be continued thereafter to the beneficiary until the sum of all monthly payments made to the Annuitant and beneficiary equals such net cash value.

The following table shows the amount of monthly income for each $1,000.00 of net cash value, according to the option selected, the sex and the attained age of the Annuitant at the time the first payment is to be made. The net cash value as used herein is the tabular cash value less any then existing indebtedness to the Company secured by this policy.

If the amount of each monthly payment would be less than $25.00, the Company reserves the right to pay in one sum the amount of the net cash value.

ANNUITY OPTIONS

MALE				FEMALE		
Option A Life Ann. with 120 Months Certain	Option B Life Annuity	Option C Install. Refund Annuity	Attained Age Last Birthday	Option A Life Ann. with 120 Months Certain	Option B Life Annuity	Option C Install. Refund Annuity
$3.57	$3.58	$3.52	35	$3.36	$3.37	$3.33
3.62	3.63	3.55	36	3.40	3.40	3.36
3.66	3.68	3.59	37	3.43	3.44	3.39
3.71	3.73	3.64	38	3.47	3.48	3.43
3.76	3.78	3.68	39	3.51	3.52	3.47
3.82	3.83	3.73	40	3.55	3.56	3.50
3.87	3.89	3.77	41	3.60	3.61	3.54
3.93	3.95	3.82	42	3.64	3.65	3.58
3.99	4.02	3.88	43	3.69	3.70	3.63
4.06	4.09	3.93	44	3.74	3.75	3.67
4.13	4.16	3.99	45	3.79	3.81	3.72
4.20	4.24	4.05	46	3.85	3.86	3.77
4.27	4.32	4.11	47	3.91	3.92	3.82
4.35	4.40	4.17	48	3.97	3.99	3.88
4.43	4.49	4.24	49	4.03	4.05	3.93
4.51	4.58	4.31	50	4.10	4.12	3.99
4.60	4.68	4.38	51	4.17	4.20	4.06
4.69	4.78	4.46	52	4.24	4.28	4.12
4.78	4.88	4.54	53	4.32	4.36	4.19
4.88	5.00	4.62	54	4.41	4.45	4.26
4.98	5.11	4.71	55	4.50	4.55	4.34
5.09	5.24	4.80	56	4.59	4.65	4.42
5.20	5.37	4.90	57	4.69	4.75	4.50
5.32	5.51	5.00	58	4.79	4.87	4.59
5.44	5.66	5.11	59	4.90	4.99	4.69
5.57	5.82	5.22	60	5.02	5.12	4.79
5.71	5.98	5.33	61	5.14	5.26	4.89
5.85	6.16	5.46	62	5.27	5.40	5.00
5.99	6.36	5.59	63	5.40	5.56	5.12
6.14	6.56	5.73	64	5.55	5.73	5.24
6.30	6.78	5.88	65	5.70	5.92	5.37
6.47	7.02	6.03	66	5.86	6.11	5.51
6.64	7.27	6.19	67	6.02	6.33	5.66
6.81	7.54	6.37	68	6.19	6.55	5.82
6.99	7.83	6.55	69	6.37	6.80	5.98
7.17	8.15	6.75	70	6.56	7.06	6.16
7.35	8.49	6.96	71	6.75	7.35	6.35
7.54	8.86	7.17	72	6.95	7.66	6.55
7.72	9.25	7.41	73	7.15	8.00	6.76
7.90	9.68	7.66	74	7.35	8.37	6.99
8.08	10.14	7.92	75	7.56	8.76	7.23
8.26	10.64	8.20	76	7.77	9.19	7.49
8.43	11.18	8.50	77	7.97	9.66	7.76
8.59	11.77	8.82	78	8.17	10.18	8.06
8.74	12.41	9.17	79	8.36	10.74	8.38
8.88	13.11	9.53	80	8.54	11.35	8.72

PLAINTIFF'S EXHIBIT NO. 7

LOANS

16. LOANS — The Company, at any time prior to the maturity date, if no premium is then in default, will loan to the Annuitant on proper assignment of this policy any sum not exceeding the amount of the cash value for the end of the then current policy year. From such loan there will be deducted any existing indebtedness to the Company secured by this policy and any unpaid premium for the balance of the current policy year. Interest in advance at the rate of five per cent per annum will be collected on the loan to the end of the current policy year. Interest on the loan at the same rate will be payable annually in advance thereafter, and if not so paid, will be added to the principal and bear the same rate of interest.

17. REPAYMENT — Loans may be repaid in whole or in part at any time prior to default in premium payment or within the grace period. Failure to repay any loan, or to pay interest when due, shall not void the policy unless the total indebtedness shall equal or exceed the cash value of the policy at the time of such failure, in which case the policy shall become void thirty-one days after mailing of notice by the Company to the last known address of the Annuitant and of any assignee of record at the home office.

NONFORFEITURE

18. OPTIONS — Prior to the maturity date, upon default in the payment of a premium or within thirty-one days after the due date of a premium in default, the Annuitant may select one of the following options:

First Option—Cash Value — Surrender the policy for its cash value less any indebtedness to the Company on account of or secured by this policy.

Second Option—Reduced Paid-up Deferred Annuity — Upon written request, the policy may be continued as a paid-up deferred annuity with reduced monthly annuity payments commencing on the maturity date and continuing thereafter as long as the Annuitant lives, in accordance with the Annuity Option selected. The monthly annuity payment thereunder shall be such as the cash value of this policy at the time of default in premium payment, less any indebtedness then existing hereon, will provide, when accumulated at three per cent compound interest per annum to the maturity date, and then applied as a net value in accordance with the Annuity Option table.

Such paid-up deferred annuity may be surrendered on any policy anniversary prior to commencement of annuity payments, or within thirty days after such policy anniversary, for a cash surrender value equal to the cash value as of the date of default in premium payment less the then existing indebtedness, with interest thereon at the rate stated to the date of such surrender. If the Annuitant dies after this nonforfeiture option becomes effective and before commencement of annuity payments the cash value of such paid-up deferred annuity at the date of such death will be paid as a death benefit to the beneficiary.

If this policy is not surrenderd within thirty-one days after the due date of a premium in default, it shall automatically be continued as a reduced paid-up deferred annuity as provided above.

TABULAR VALUES — The values shown in the following table are based on an annual premium of $100.00. If the annual premium on this policy, exclusive of premiums charged for disability benefits, if any, included herein is more or less than $100.00, the values shown below will be increased or decreased proportionately.

The table shows the values guaranteed upon the assumption that premiums have been fully paid for the completed years stated and there is no indebtedness. Any existing indebtedness to the Company secured by this policy will diminish such values in the manner above stated. If fractional premiums in addition to premiums for whole years be paid, due allowance will be made in the guaranteed values. Values for years subsequent to those shown will be furnished on request.

CASH VALUE TABLE

End of Year	Cash Value per $100 Annual Premium	End of Year	Cash Value per $100 Annual Premium
1	$ 52	36	$6,089
2	148	37	6,369
3	247	38	6,658
4	349	39	6,956
5	455	40	7,263
6	564	41	7,578
7	678	42	7,903
8	795	43	8,238
9	916	44	8,583
10	1,042	45	8,939
11	1,177	46	9,305
12	1,317	47	9,682
13	1,461	48	10,070
14	1,610	49	10,470
15	1,765	50	10,882
16	1,916	51	11,306
17	2,071	52	11,743
18	2,231	53	12,193
19	2,396	54	12,657
20	2,566	55	13,134
21	2,740	56	13,626
22	2,920	57	14,133
23	3,106	58	14,655
24	3,297	59	15,192
25	3,494	60	15,746
26	3,696	61	16,316
27	3,905	62	16,903
28	4,120	63	17,508
29	4,341	64	18,131
30	4,569	65	18,773
31	4,804		
32	5,046		
33	5,296		
34	5,552		
35	5,817		

PLAINTIFF'S EXHIBIT NO. 7

Annuity Application to the UNITED BENEFIT LIFE INSURANCE COMPANY

Section A. The Proposed Annuitant

1. Full name (First) John (Middle) (Last) Ublic

2. Residence address 1234 State Street
City Omaha State Nebraska

3. Occupation: Attorney

4. How long in present occupation? 5 yrs.

5. Place of birth	6. Sex	7. Birth date (Mo.-Day-Year)	8. Age	9. Marital status
Nebr.	M	3-30-29	35	Married

10. Former addresses over last two years.

11. Name and address of employer.
Self-employed

12. Address where premium notices are to be sent.
City Same as #2 State

This space reserved for Home Office use.

Social Security No. _____

Section B. The Annuity

1. Amount of Annuity Income: $ 338.65

2. How will annuity income be paid? ☒ Monthly ☐ Annually ☐ _____

3. Type of annuity policy desired (describe fully).
AFDRA-65 Option A

4. Premium payable
☐ A. ☐ S.A.
☐ Q. ☒ BSP
☐ Single
☐ _____
Amount of Premium $ 100.00

5. A photostatic or certified copy of documents substantiating the date of birth should be attached. Possible forms of evidence, in order of acceptability, are listed below. Indicate, by checking the appropriate box, the form of evidence that is being attached.
- ☐ The best form of evidence is a certificate of birth or baptism.
- ☐ Social Security record.
- ☐ Family record made upon after birth, if certified by a notary.
- ☐ Naturalization papers.
- ☐ School or army records.
- ☐ A life insurance policy issued several years ago.
- ☐ If none of the above is available, secure an affidavit from living relatives.

Section C. The Beneficiary

Name and relationship of beneficiary. (The right to change the beneficiary is reserved.) Not applicable if application is for an immediate life-only annuity.

Mary Ublic, Wife

I declare that the answers in this application are, to the best of my knowledge, true and complete, and agree that:
1. The Company is not bound by any statements made by or to any agent unless such statements are written in this application.
2. If the applicant is other than the proposed annuitant, any policy issued on the basis of this application shall be owned by the applicant.

I have paid $_____ premium with this application.

Date June 15 1964

_____
Witness (Soliciting Agent)

Signed at Omaha, Nebraska

X _____
Proposed Annuitant

_____
Applicant (See item 2 of agreement)

No. 2633

Form 25L 5-63 (General Agent's Stamp) (Soliciting Agent's Stamp)

OPTIONAL METHODS OF SETTLEMENT

ELECTION OF OPTION — Subject to the terms and conditions hereof, the Annuitant may elect that the proceeds of this policy be paid in accordance with one of the options described below, or in such other manner as may be mutually agreed upon in writing between the Annuitant and the Company, and may direct that the beneficiary shall not have the right to withdraw, assign or commute any sum payable under an option. In the absence of such direction, the beneficiary may change the manner of payment or make an election of option. Any election shall become effective when acknowledged by the Company.

If no beneficiary survives the Annuitant, or if any change of beneficiary is made subsequent to the election of an Optional Method of Settlement, such election shall no longer be effective.

GENERAL CONDITIONS — The Company shall not be required to retain less than $1,000.00 under an Optional Method of Settlement for any one payee, or to make periodic payments of less than $25.00 each. If the amount available to any one payee does not meet these requirements, the Company shall have the right to pay such amount in one sum immediately, or to change the periodic payments to a less frequent basis such that each payment be not less than $25.00.

The Company shall be obligated to apply policy proceeds under an Optional Method of Settlement only if the payee is a natural person taking in his or her own right as an individual and not in a fiduciary capacity or as assignee.

The cash value of a policy may be applied under an Optional Method of Settlement only if the policy has been in force for five years or more.

The maximum period for which policy proceeds may be retained under any option is thirty years or the lifetime of the payee.

If the death of the last surviving payee occurs before full payment has been made under any option, the amount remaining on deposit, or the then present value of any remaining installments certain, will be paid in one sum to the estate of such last surviving payee. Commutation of remaining installments will be at the guaranteed rate if proceeds have been applied under Option 2, Option 3, or Part (a) of Option 4, and at the rate provided in the corresponding annuity policy if the proceeds have been applied under Part (b) of Option 4.

The guaranteed rate of interest used in these Optional Methods of Settlement is three per cent per annum.

Option 1 — Proceeds on Deposit at Interest — The proceeds may be left on deposit for a period to be elected. During such period the Company will pay interest to the payee annually at the guaranteed rate and at the end of the period will pay the amount then on deposit in the manner set out in the election.

Option 2 — Income of a Specified Amount — The proceeds will be paid in monthly installments of a specified amount until the proceeds, with interest at the guaranteed rate on remaining balances, are exhausted.

Option 3 — Income for a Specified Period — The proceeds will be paid as a monthly income for the fixed period elected. The monthly income shown in the following table, for each $1,000.00 so applied, includes interest at the guaranteed rate.

Fixed Period of Years	Monthly Income	Fixed Period of Years	Monthly Income
1	$ 84.47	16	$ 6.53
2	42.86	17	6.23
3	28.99	18	5.96
4	22.06	19	5.73
5	17.91	20	5.51
6	15.14	21	5.32
7	13.16	22	5.15
8	11.68	23	4.99
9	10.53	24	4.84
10	9.61	25	4.71
11	8.86	26	4.59
12	8.24	27	4.47
13	7.71	28	4.37
14	7.26	29	4.27
15	6.87	30	4.18

Option 4 — Life Income with Minimum Guarantee — The proceeds will be applied to purchase a monthly income to continue as long as the payee lives. On the ten years certain basis, such income will be paid for a minimum of ten years. On the Installment Refund basis, such income will be paid at least until the sum of all payments shall equal the amount applied under this option.

The amount of monthly income, for each $1,000.00 of policy proceeds so applied, shall be the greater of: (a) the amount shown in the table below according to the sex and age last birthday of the payee at the time the first payment becomes due and (b) the amount of corresponding benefit that could be purchased by a single premium of $1,030.00 according to the Company's rates in effect for annuity policies at the time the first payment becomes due.

MONTHLY LIFE INCOME FOR EACH $1,000.00 OF PROCEEDS

Age Last Birthday of Payee	10 Years Certain		Installment Refund	
	Male	Female	Male	Female
10	$2.92	$2.84	$2.91	$2.83
11	2.93	2.85	2.92	2.84
12	2.95	2.86	2.94	2.86
13	2.97	2.88	2.95	2.87
14	2.98	2.89	2.97	2.88
15	3.00	2.91	2.99	2.90
16	3.02	2.92	3.00	2.91
17	3.04	2.94	3.02	2.93
18	3.06	2.95	3.04	2.94
19	3.08	2.97	3.06	2.96
20	3.10	2.99	3.08	2.98
21	3.12	3.01	3.11	2.99
22	3.15	3.03	3.13	3.01
23	3.17	3.05	3.15	3.03
24	3.20	3.07	3.18	3.05
25	3.23	3.09	3.20	3.07
26	3.25	3.11	3.23	3.09
27	3.28	3.13	3.25	3.12
28	3.31	3.16	3.28	3.14
29	3.35	3.18	3.31	3.16
30	3.38	3.21	3.34	3.19
31	3.41	3.24	3.37	3.21
32	3.45	3.27	3.41	3.24
33	3.49	3.30	3.44	3.27
34	3.53	3.33	3.48	3.30
35	3.57	3.36	3.52	3.33
36	$3.62	$3.40	$3.55	$3.36
37	3.66	3.43	3.59	3.39
38	3.71	3.47	3.64	3.43
39	3.76	3.51	3.68	3.47
40	3.82	3.55	3.73	3.50
41	3.87	3.60	3.77	3.54
42	3.93	3.64	3.82	3.58
43	3.99	3.69	3.88	3.63
44	4.06	3.74	3.93	3.67
45	4.13	3.79	3.99	3.72
46	4.20	3.85	4.05	3.77
47	4.27	3.91	4.11	3.82
48	4.35	3.97	4.17	3.88
49	4.43	4.03	4.24	3.93
50	4.51	4.10	4.31	3.99
51	4.60	4.17	4.38	4.06
52	4.69	4.24	4.46	4.12
53	4.78	4.32	4.54	4.19
54	4.88	4.41	4.62	4.26
55	4.98	4.50	4.71	4.34
56	5.09	4.59	4.80	4.42
57	5.20	4.69	4.90	4.50
58	5.32	4.79	5.00	4.59
59	5.44	4.90	5.11	4.69
60	5.57	5.02	5.22	4.79
61	5.71	5.14	5.33	4.89
62	$5.85	$5.27	$ 5.46	$ 5.00
63	5.99	5.40	5.59	5.12
64	6.14	5.55	5.73	5.24
65	6.30	5.70	5.88	5.37
66	6.47	5.86	6.03	5.51
67	6.64	6.02	6.19	5.66
68	6.81	6.19	6.37	5.82
69	6.99	6.37	6.55	5.98
70	7.17	6.56	6.75	6.16
71	7.35	6.75	6.96	6.35
72	7.54	6.95	7.17	6.55
73	7.72	7.15	7.41	6.76
74	7.90	7.35	7.66	6.99
75	8.08	7.56	7.92	7.23
76	8.26	7.77	8.20	7.49
77	8.43	7.97	8.50	7.76
78	8.59	8.17	8.82	8.06
79	8.74	8.36	9.17	8.38
80	8.88	8.54	9.53	8.72
81	9.00	8.71	9.91	9.09
82	9.12	8.87	10.34	9.48
83	9.22	9.01	10.77	9.89
84	9.30	9.14	11.24	10.36
85 and over	9.38	9.24	11.76	10.84

DEFERRED RETIREMENT ANNUITY—Death Benefit Prior to Maturity. Premiums Payable to Maturity. Nonparticipating.

ANNUAL STATEMENT

OF THE

UNITED BENEFIT
Life Insurance Company

of

OMAHA

in the

STATE OF NEBRASKA

TO THE

Insurance Department

OF THE

STATE OF

_____

FOR THE YEAR ENDED
DECEMBER 31, 1963

LIFE AND ACCIDENT AND HEALTH, 1963

1963

1963

PLAINTIFF'S EXHIBIT NO. 8-A

35

United Benefit Life Insurance Company's Annual Statement, for the year ended December 31, 1963, has been signed by G. A. Ecklund, Vice President, on the line usually designated for the president.

N. M. Longworth, the former president, died November 8, 1963, and a successor has not, as yet, been elected by the Board of Directors.

February 10, 1964

United Benefit Life Insurance Company's Annual Statement, for the year ended December 31, 1963, has been signed by G. A. Ecklund, Vice President, on the line usually designated for the president.

N. M. Longworth, the former president, died November 8, 1963, and a successor has not, as yet, been elected by the Board of Directors.

February 10, 1964

ANNUAL STATEMENT

For the Year Ended December 31, 1963

OF THE CONDITION AND AFFAIRS OF THE

UNITED BENEFIT LIFE INSURANCE COMPANY

Organized under the Laws of the State of NEBRASKA, made to the

INSURANCE DEPARTMENT OF THE STATE OF

PURSUANT TO THE LAWS THEREOF

Incorporated AUGUST 9, 1926 Commenced Business NOVEMBER 26, 1926

Home Office 3316 FARNAM STREET (Street and Number), OMAHA, NEBRASKA 68131 (City or Town, Zone Number and State)

Mail Address 3316 FARNAM STREET (Street and Number), OMAHA, NEBRASKA 68131 (City or Town, Zone Number and State)

OFFICERS

President Deceased November 8, 1963

Secretary FRANK P. HANNAN

Treasurer M. T. CRUMMER

Vice-Presidents M. L. CRISS, N. L. CRISS, R. L. DALY, T. A. ECKLUND, A. W. RANDALL, R. J. TAYLOR, R. S. WAGNER, W. R. WELLMAN

VICE-PRESIDENT & Actuary DALE R. GUSTAFSON

DIRECTORS OR TRUSTEES

MELVIN BEKINS	OMAHA, NEBRASKA	DALE E. DAVIS	OMAHA, NEBRASKA	A. W. LARSEN	OMAHA, NEBRASKA
GEORGE B. BOLAND	OMAHA, NEBRASKA	FRANK J. HORAN	OMAHA, NEBRASKA	V. J. SKUTT	OMAHA, NEBRASKA
W. DALE CLARK	OMAHA, NEBRASKA	PHILIP E. HORAN	OMAHA, NEBRASKA	W. O. SWANSON	OMAHA, NEBRASKA
M. L. CRISS	OMAHA, NEBRASKA	DONALD K. HOWE	OMAHA, NEBRASKA	PAUL R. THOMPSON	OMAHA, NEBRASKA
R. L. DALY	OMAHA, NEBRASKA			JOSEPH J. VINARDI	OMAHA, NEBRASKA

State of NEBRASKA
County of DOUGLAS } ss:

T. A. Ecklund Vice, President, Frank P. Hannan, Secretary, Dale R. Gustafson, Actuary, M. T. Crummer, Treasurer* of the United Benefit Life Insurance Company, being duly sworn, each for himself deposes and says that they are the above described officers of the said insurer, and that on the thirty-first day of December last, all of the herein described assets were the absolute property of the said insurer free and clear from any liens or claims thereon, except as herein stated, and that this annual statement, together with related exhibits, schedules and explanations therein contained, annexed or referred to are a full and true statement of all the assets and liabilities and of the condition and affairs of the said insurer as of the thirty-first day of December last, and of its income and deductions therefrom for the year ended on that date, according to the best of their information, knowledge and belief, respectively.

Subscribed and sworn to before me this

11th day of February, 1964

Notary Public

T. A. Ecklund — Vice President.

Frank P. Hannan — Secretary.

Dale R. Gustafson — Actuary.

— Treasurer*.

*Or corresponding persons having charge of the accounts and finances of the insurer.

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ANNUAL STATEMENT FOR THE YEAR 1963 OF THE UNITED BENEFIT LIFE INSURANCE COMPANY

Write or Stamp Name

Form 1

EXCEPT FOR ITEMS 25A AND 26, THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

ASSETS

			DOLLARS CENTS
1.	Bonds (Schedule D)		225,124,662.26
2.	Stocks (Schedule D)		54,060,073.48
3.	Mortgage loans on real estate (Schedule B)		120,128,758.75
4.	Real estate (Schedule A)		
4.1	Properties occupied by the Company (less $26,875.00 encumbrances)	$ 9,444,188.78	
4.2	Properties acquired in satisfaction of debt (less $ -0- encumbrances)	58,087.52	
4.3	Investment real estate (less $ -0- encumbrances)	3,498,813.55	13,001,089.85
5.	Policy loans		27,597,973.77
6.	Premium notes		-0-
7.	Collateral loans (Schedule C)		-0-
8.	Cash and bank deposits (Exhibit 13)		2,971,920.30
9.	United States Premium Loans		1,538.94
10.	Other invested assets (Schedule BA)		-0-
10A.	Cash and invested assets $ 442,886,017.35 (Items 1 to 10)		
11.	Amounts recoverable from reinsurers (Schedule S)		7,446.00
12.	Electronic Data Processing Equipment		517,642.94
13.	Managers Annuity Accounts		1,154.91
14.	Premiums in course of collection		116,167.33
15.	Mortgage Escow Accounts ($1,591,525.26)		-0-
16.			
17.	Life insurance premiums and annuity considerations deferred and uncollected		11,672,427.60
18.	Accident and health premiums due and unpaid effective after September 30th of current year		-0-
19.	Interest and other investment income due and accrued		2,980,292.92
20.	Net adjustment in assets and liabilities due to foreign exchange rates		-0-
21.			
22.			
23.			
24.			
25.			
25A.	Separate Account Business (see Separate Account Statement)		286,290.33
26.	TOTAL		458,467,439.38

NOTE: The items on this page to agree with Exhibit 13, Col. 4.

State basis of valuation:

Bonds on Amortized Basis (Commissioner's Market where required)

Preferred Stocks at Commissioner's Value

Common Stocks at Commissioner's Value

EXCEPT FOR ITEMS 25A, 26, 27, 29, 30 AND 31, THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

LIABILITIES, SURPLUS AND OTHER FUNDS

			DOLLARS CENTS
1.	Aggregate reserve for life policies and contracts (Exhibit 8)		352,596,079.00
2.	Aggregate reserve for accident and health policies (Exhibit 9, Part 1)		5,785,637.16
3.	Supplementary contracts without life contingencies (Exhibit 10, Col. 5)		4,621,993.00
4.	Policy and contract claims		
4.1	Life (Exhibit 11, Part 1)		2,812,111.18
4.2	Accident and Health (Exhibit 9, Part 2)		1,366,674.03
5.	Policyholders' dividend accumulations (Exhibit 10, Col. 6)		21,482.00
6.	Policyholders' dividends due and unpaid		-0-
7.	Provision for policyholders' dividends payable in following calendar year—estimated amounts:		
7.1	Apportioned for payment to March 1, 19 64	$ 3,087.24	
7.2	Not yet apportioned	31,479.61	34,566.85
8.	Amount provisionally held for deferred dividend policies not included in Item 7		-0-
9.	Premiums and annuity considerations received in advance less $ -0- discount; including $ 118,362.22 accident and health premiums		512,828.83
10.	Liability for premium deposit funds (Including $19,733.60 interest)		1,147,368.14
11.	Policy and contract liabilities not included elsewhere:		
11.1	Surrender values on cancelled policies		-0-
11.2	Provision for experience rating refunds (Includes $641,754.59 refunded on deposits)		2,924,272.84
11.3	Accumulated Savings $52,913.09; Coupons on Deposit $106,257.74		162,098.06
12.	Deposit Administration Fund		753,511.17
13.	Commissions to agents due or accrued—Life and Annuity $410,660.30 Accident and Health $ 8,215.25		418,875.55
14.	General expenses due or accrued (Exhibit 5, Line 11)		600,207.98
15.	Taxes, licenses and fees due or accrued, excluding federal income taxes (Exhibit 6, Line 8)		1,193,175.25
15A.	Federal income taxes due or accrued (including $ -0- on capital gains)		1,228,244.00
16.	"Cost of collection" on premiums and annuity considerations deferred and uncollected in excess of total loading thereon		-0-
17.	Unearned investment income (Exhibit 3, Col. 2)		385,815.32
18.	Amounts withheld or retained by company as agent or trustee		128,247.19
19.	Amounts held for agents' account (including $ 288,174.16 agents' credit balances)		326,826.62
20.	Remittances and items not allocated		533,185.90
21.	Net adjustment in assets and liabilities due to foreign exchange rates		502,014.11
22.	Liability for benefits for employees and agents if not included above		-0-
23.	Borrowed money $ 91,000.00 and interest thereon $ -0-		91,000.00
24.	Dividends to stockholders declared and unpaid		-0-
25.	Miscellaneous liabilities (give items and amounts)		
25.1	Mandatory securities valuation reserve		16,269,092.70
25.2	Reserve for revision of employees retirement plans		650,000.00
25.3	Undistributed funds H.O. employees group life insurance		196,116.20
25.4	Policy Revaluation Reserve		1,500,000.00
25.5	Separate Account Clearing		46.36
25.6	Group Contingency Reserve		825,623.00
25.7	Territories transferred		549,486.96
25.8	Excess Interest on Supplementary Contracts w/o Life Contingencies		5,074.00
25.9	Reserve for Unclaimed Funds		7,090.48
25A.	Separate Account Business (see Separate Account Statement)		114,281.78
26.	TOTAL LIABILITIES (Except Capital)		398,263,025.66
27.	Special surplus funds:		
27.1	Contingency Reserve	$ 5,000,000.00	
27.2		-0-	
27.3		-0-	$ 5,000,000.00
28.	Capital paid-up		1,000,000.00
29.	Unassigned surplus		* 54,204,413.72
30.	Total of Items 27 to 29		60,204,413.72
31.	TOTAL		458,467,439.38

*Includes "Policyholders Surplus" as defined by the Life Insurance Company tax act of 1959,--estimated to be $7,823,231.00

EXCEPT FOR ITEMS 34, 35, 41A, 42, 48A, 49, 50 AND 51, THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

SUMMARY OF OPERATIONS
(ACCRUAL BASIS)

		DOLLARS CENTS
1.	Premiums and annuity considerations (Exhibit 1, Part 1)	
1.1	Life	50,105,335.53
1.2	Accident and health	5,324,753.72
2.	Considerations for supplementary contracts with life contingencies	169,173.33
3.	Considerations for supplementary contracts without life contingencies and dividend accumulations	1,037,987.15
4.	Net investment income (Exhibit 2)	17,638,398.26
5.	Separate Account Expenses Allowance $25,078.53; Deposit Administration Funds $730,103.25	755,181.78
6.	Sundry Receipts	13,036.58
7.	TOTAL	83,043,866.35
	DEDUCT:	
8.	Death benefits	16,894,843.06
9.	Matured endowments	2,364,796.90
10.	Annuity benefits	1,981,854.47
11.	Disability benefits	166,674.98
12.	Surrender benefits	7,694,624.70
12A.	Group conversions	21,800.88
13.	Benefits under accident and health policies	3,757,298.04
14.	Interest on policy or contract funds	37,644.62
15.	Payments on supplementary contracts with life contingencies	262,789.41
16.	Payments on supplementary contracts without life contingencies and of dividend accumulations	845,640.18
17.	Increase in aggregate reserve for policies and contracts with life contingencies	21,275,330.93
18.	Increase in reserves for supplementary contracts without life contingencies and for dividend accumulations	284,134.61
19.1	Increase in Deposit Administration Funds	714,794.30
19.2	Increase in Reserves for Accident & Health policies	- 222,965.89
20.	Subtotal (Items 8 to 19)	56,079,661.19
21.	Commissions on premiums and annuity considerations	8,184,449.20
22.	Cost of territories transferred	296,349.00
23.	General insurance expenses (Exhibit 5, Cols. 1 and 2, Line 13)	7,585,015.95
24.	Insurance taxes, licenses and fees, excluding federal income taxes (Exhibit 6, Cols. 1 and 2, Line 10)	1,479,839.91
25.	Increase in loading on and cost of collection in excess of loading on deferred and uncollected premiums	121,586.78
26.	Increase in reserves for unclaimed funds	633.58
27.	Total (Items 20 to 26)	73,747,535.61
28.	Net gain from operations before dividends to policyholders and federal income taxes and excluding capital gains and losses (Item 7 minus Item 27)	9,296,330.74
29.	Dividends to life policyholders (Exhibit 7)	34,891.55
30.	Dividends on accident and health policies (Exhibit 7)	-0-
31.	Increase in amount provisionally held for deferred dividend policies	-0-
32.	TOTAL (Items 29 to 31)	34,891.55
32A.	Net gain from operations after dividends to policyholders and before federal income taxes, excluding capital gains and losses (Item 28 minus Item 32)	9,261,439.19
32B.	Federal income taxes incurred (excluding tax on capital gains)	2,068,095.40
33.	NET GAIN FROM OPERATIONS AFTER DIVIDENDS TO POLICYHOLDERS AND FEDERAL INCOME TAXES (excluding tax on capital gains) AND EXCLUDING CAPITAL GAINS AND LOSSES (Item 32A minus Item 32B)	7,193,343.79

SURPLUS ACCOUNT

		DOLLARS CENTS			DOLLARS CENTS
34.	Special surplus funds December 31, previous year		43.	Dividends to stockholders	500,000.00
35.	Unassigned surplus December 31, previous year	54,637,890.55	44.	Special Group Reserve	161,434.61
36.				Employees Retirement Plans	250,000.00
36A.			44A.	Policy Revaluation Reserve	1,500,000.00
36B.			44B.	Prior year's expense adjustment	7,844.68
37.	Net gain (from Item 33)	7,193,343.79	45.	Net capital losses (Exhibit 4, Line 10.2)	
38.	Net capital gains (Exhibit 4, Line 10.2)	4,027,381.13	46.	Increase in reserve on account of change in valuation basis	33,429.00
39.	Surplus paid in		47.	Net loss from non-admitted and related items (Exhibit 14, Col. 3, Line 40)	
40.	Net gain from non-admitted and related items (Exhibit 14, Col. 3, Line 40)	138,949.50	48.	Increase in mandatory securities valuation reserve	4,358,085.65
41.	Decrease in mandatory securities valuation reserve		48A.	Decrease in surplus of Separate Account Business (see Separate Account Statement)	
41A.	Increase in surplus of Separate Account Business (see Separate Account Statement)	17,642.69	49.	Special surplus funds December 31, current year (Item 27, Page 3)	5,000,000.00
42.	Total	66,015,207.66	50.	Unassigned surplus December 31, current year (Item 29, Page 3)	54,204,413.72
			51.	Total	66,015,207.66

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ANNUAL STATEMENT FOR THE YEAR 1963 OF THE UNITED BENEFIT LIFE INSURANCE COMPANY

Print or Stamp Name

ANALYSIS OF OPERATIONS BY LINES OF BUSINESS

(Gain and Loss Exhibit)

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

	Total (1)	Industrial Life (Including Total and Permanent Disability and Accidental Death Benefits) (2)	Ordinary: Life Insurance (3)	Ordinary: Total and Permanent Disability (4)	Ordinary: Additional Accidental Death (5)	Ordinary: Individual Annuities (6)	Ordinary: Supplementary Contracts (7)	Group: Life Insurance (8)	Group: Annuities (9)	Accident and Health: Group (10)	Accident and Health: Individual (11)
1. Premiums and annuity considerations (Exhibit 1, Part 1)	63,430,089.25		44,602,519.73	775,932.64	562,657.17	2,827,894.77	X X X	9,161,224.46	175,104.76	-0-	5,324,753.72
2. Considerations for supplementary contracts with life contingencies	169,173.33	INCLUDED	X X X	X X X	X X X	X X X	169,173.33	-0-	-0-	X X X	X X X
3. Considerations for supplementary contracts without life contingencies and dividend accumulations	1,037,987.15	IN COLUMN	7,646.69	-0-	-0-	-0-	1,030,340.46	-0-	-0-	-0-	-0-
4. Net investment income (Exhibit 2)	17,638,398.26		15,077,735.90	108,579.72	23,649.32	1,446,924.06	370,966.34	197,263.64	37,158.08	-0-	376,121.20
5. Sundry Receipts	13,036.58	(3)	11,143.99	80.25	17.48	1,069.43	274.18	173.26	-0-	-0-	277.99
6. Miscellaneous Income	755,181.78		25,078.53	-0-	-0-	-0-	-0-	-0-	730,103.25	-0-	-0-
7. TOTAL	83,043,866.35		59,724,124.84	884,592.61	586,323.97	4,275,890.26	1,570,754.31	9,358,661.36	942,366.09	-0-	5,701,152.91
8. Death benefits	16,894,843.06		9,754,180.56	X X X	299,395.00	X X X	-0-	6,841,267.50	X X X	X X X	X X X
9. Matured endowments	2,364,796.90		2,364,796.90	X X X	X X X	X X X	-0-	X X X	X X X	X X X	X X X
10. Annuity benefits	1,981,854.47		X X X	X X X	X X X	1,973,799.50	-0-	-0-	8,054.97	X X X	X X X
11. Disability benefits	166,674.98		X X X	165,129.86	X X X	-0-	-0-	1,545.12	-0-	X X X	X X X
12. Surrender benefits	7,694,624.70		7,694,624.70	X X X	X X X	X X X	-0-	-0-	X X X	X X X	X X X
12A. Group conversions	21,800.88		-81,949.27	-0-	X X X	X X X	-0-	103,750.15	X X X	-0-	-0-
12B. Transfers on account of group package policies and contracts	X X X	X X X	X X X	X X X	X X X	X X X	X X X	-0-	-0-	-0-	X X X
13. Benefits under accident and health policies	3,757,298.04	X X X	X X X	X X X	X X X	X X X	X X X	X X X	X X X	-0-	3,757,298.04
14. Interest on policy or contract funds	37,644.62		36,037.36	-0-	-0-	-0-	-0-	-0-	863.23	-0-	744.03
15. Payments on supplementary contracts with life contingencies	262,789.41		X X X	X X X	X X X	X X X	262,789.41	-0-	-0-	X X X	X X X
16. Payments on supplementary contracts without life contingencies and of dividend accumulations	845,640.18		16,794.96	-0-	-0-	-0-	828,845.22	-0-	-0-	-0-	-0-
17. Increase in aggregate reserve for policies and contracts with life contingencies	21,275,730.93		18,557,359.00	146,066.00	57,375.00	1,508,689.00	8,109.00	828,555.93	169,577.00	-0-	-0-
18. Increase in reserves for supplementary contracts without life contingencies and for dividend accumulations	284,134.61		- 1,469.39	-0-	-0-	-0-	285,604.00	-0-	-0-	-0-	-0-
19-1 Increase in deposit administration funds	714,794.30		-0-	-0-	-0-	-0-	-0-	-0-	714,794.30	-0-	-0-
19-2 Increase in reserve for accident and health policies	-222,965.89		-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-222,965.89
20. SUBTOTAL (Items 8 to 19)	56,079,661.19		38,340,374.82	311,195.86	356,770.00	3,482,488.50	1,385,347.63	7,775,118.70	893,289.50	-0-	3,535,076.18
21. Commissions on premiums and annuity considerations	8,184,449.20		7,081,658.92	128,393.05	105,317.12	82,568.65	-0-	222,067.74	21,155.67	-0-	543,288.05
22. Cost of territories transferred	296,349.00		254,513.56	-0-	-0-	-0-	-0-	-0-	-0-	-0-	41,835.44
23. General insurance expenses (Exhibit 5, Cols. 1 and 2, Line 13)	7,585,015.95		5,852,491.45	101,506.62	72,957.89	317,208.21	-0-	655,387.45	34,653.20	-0-	550,811.13
24. Insurance taxes, licenses and fees, excluding federal income taxes (Exhibit 6, Cols. 1 and 2, Line 10)	1,479,839.91		1,078,688.10	18,760.82	13,451.15	69,025.66	-0-	169,817.75	2,292.96	-0-	127,803.47
25. Increase in loading on and cost of collection in excess of loading on deferred and uncollected premiums	121,586.78		85,419.09	5,143.05	5,974.84	5,930.80	-0-	19,119.00	-0-	-0-	-0-
26. Increase in reserves for unclaimed funds	633.58		633.58	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
27. TOTAL (Items 20 to 26)	73,747,535.61		52,693,779.52	564,999.40	554,471.00	3,957,221.82	1,385,347.63	8,841,510.64	951,391.33	-0-	4,798,811.27
28. Net gain from operations before dividends to policyholders and federal income taxes and excluding capital gains and losses (Item 7 minus Item 27)	9,296,330.74		7,030,345.32	319,593.21	31,852.97	318,668.44	185,406.68	517,150.72	-9,025.24	-0-	902,338.64
29. Dividends to life policyholders (Exhibit 7)	34,891.55		34,891.55	-0-	-0-	-0-	-0-	-0-	-0-	X X X	X X X
30. Dividends on accident and health policies (Exhibit 7)	-0-	X X X	X X X	X X X	X X X	X X X	X X X	X X X	X X X	-0-	-0-
31. Increase in amounts provisionally held for deferred dividend policies	-0-		-0-	-0-	-0-	-0-	-0-	-0-	-0-	X X X	X X X
32. TOTAL (Items 29 to 31)	34,891.55		34,891.55	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
32A. Net gain from operations after dividends to policyholders and before federal income taxes, excluding capital gains and losses (Item 28 minus Item 32)	9,261,439.19		6,995,453.77	319,593.21	31,852.97	318,668.44	185,406.68	517,150.72	-9,025.24	-0-	902,338.64
32B. Federal income taxes incurred (excluding tax on capital gains)	2,068,095.40		1,774,989.51	81,105.70	8,168.92	80,716.70	-0-	17,559.00	-0-	-0-	105,555.57
33. Net gain from operations after dividends to policyholders and federal income taxes (excluding tax on capital gains) and excluding capital gains and losses (Item 32A minus Item 32B)	7,193,343.79		5,220,464.26	238,487.51	23,684.05	237,951.74	185,406.68	499,591.72	-9,025.24	-0-	796,783.07

ANNUAL STATEMENT FOR THE YEAR 1963 OF THE UNITED BENEFIT LIFE INSURANCE COMPANY

Write or Stamp Name

ANALYSIS OF INCREASE IN RESERVES DURING THE YEAR
(Gain and Loss Exhibit)

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

	TOTAL (1)	INDUSTRIAL LIFE (Including Total and Permanent Disability and Accidental Death Benefits) (2)	ORDINARY					GROUP	
			Life Insurance (3)	Total and Permanent Disability (4)	Accidental Death Benefits (5)	Individual Annuities (6)	Supplementary Contracts (7)	Life Insurance (8)	Annuities (9)
1. Reserve Dec. 31 of previous year	338,095,949		296,518,214	2,137,330	452,943	28,686,746	7,399,578	2,625,946	275,192
2. Tabular net premiums or considerations	48,875,825	INCLUDED	37,115,452	465,560	337,594	2,491,330	169,173	8,134,167	162,549
3. Considerations for supplementary contracts without life contingencies and dividend accumulations	1,037,987	IN COLUMN (3)	7,647	-0-	-0-	-0-	1,030,340	-0-	-0-
4. Present value of disability claims incurred	582,713		X X X	124,050	X X X	-0-	X X X	458,663	-0-
5. Tabular interest	9,884,184		8,676,814	57,204	15,544	756,012	159,796	203,458	15,356
6. Tabular less actual reserve released	489,493	X X X	X X X	162,768	X X X	300,960	26,038	-0-	-273
7. Increase in reserve on account of change in valuation basis	33,429		-0-	-0-	-0-	24,734	8,695	-0-	-0-
8. Other increases (net)	-0-		-0-	-0-	-0-	-0-	-0-	-0-	-0-
9. Totals (Items 1 to 8)	398,999,580		342,318,127	2,946,912	806,081	32,259,782	8,793,620	11,422,234	452,824
10. Tabular cost	20,393,488		11,800,792	375,518	295,763	-0-	X X X	7,921,415	-0-
11. Reserves released by death	2,972,448		2,972,448	X X X	X X X	X X X	X X X	-0-	X X X
12. Reserves released by other terminations (net)	12,688,986		12,453,988	122,868	-0-	65,813	-0-	46,317	-0-
13. Annuity, supplementary contract, disability and accumulated dividend payments	3,255,414		16,795	165,130	-0-	1,973,800	1,091,634	-0-	8,055
14. Total Deductions (Items 10 to 13)	39,310,336		27,244,023	663,516	295,763	2,039,613	1,091,634	7,967,732	8,055
15. Reserve Dec. 31 of current year	359,689,244		315,074,104	2,283,396	510,318	30,220,169	7,701,986	3,454,502	444,769

ANNUAL STATEMENT FOR THE YEAR 1963 OF THE UNITED BENEFIT LIFE INSURANCE COMPANY

(Write or Stamp Name)

EXHIBIT 1

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

		TOTAL (1)	INDUSTRIAL LIFE (Including Total and Permanent Disability and Accidental Death Benefits) (2)	ORDINARY: Life Insurance (3)	ORDINARY: Total and Permanent Disability (4)	ORDINARY: Additional Accidental Death (5)	ORDINARY: Individual Annuities (6)	GROUP: Life Insurance (7)	GROUP: Annuities (8)	ACCIDENT AND HEALTH: Group (9)	ACCIDENT AND HEALTH: Individual (10)	
		PART 1—Premiums and Annuity Considerations (Gross, Less Reinsurance Ceded)										
CURRENT YEAR	**FIRST YEAR (Other Than Single)**											
	1. Uncollected	98,184.46		93,696.36	1,872.13	1,466.66	1,149.31	INCLUDED	INCLUDED	INCLUDED		1.
	2. Deferred	1,795,653.93		1,708,429.53	35,768.18	31,206.69	20,249.53					2.
	3. Line 1 + Line 2	1,893,838.39		1,802,125.89	37,640.31	32,673.35	21,398.84					3.
	4. Advance	68,311.87		68,069.96	-0-	-0-	241.91	WITH	WITH	WITH		4.
	5. Line 3 — Line 4	1,825,526.52		1,734,055.93	37,640.31	32,673.35	21,156.93					5.
	6. Collected during year	5,800,136.87		5,515,166.09	101,727.05	88,272.40	94,971.33					6.
	7. Line 5 + Line 6	7,625,663.39		7,249,222.02	139,367.36	120,945.75	116,128.26	RENEWAL	RENEWAL	RENEWAL		7.
	8. Previous year (uncollected + deferred — advance)	1,666,510.64		1,594,135.75	30,426.30	29,014.37	12,934.22					8.
	9. First year premiums and considerations Line 7 — Line 8	5,959,152.75		5,655,086.27	108,941.06	91,931.38	103,194.04					9.
	SINGLE											
	10. Single premiums and considerations	531,217.10		72,203.90	-0-	-0-	459,013.20	-0-	-0-	-0-	-0-	10.
CURRENT YEAR	**RENEWAL**											
	11. Uncollected	2,731,440.35	INCLUDED	1,553,141.75	24,731.46	16,591.46	12,515.35	1,124,460.48	-0-	-0-	-0-	11.
	12. Deferred	9,734,768.45		9,314,451.25	174,048.42	128,927.09	117,341.69	-0-	-0-	-0-	-0-	12.
	13. Line 11 + Line 12	12,466,208.80		10,867,593.00	198,779.88	145,518.40	129,857.04	1,124,460.48	-0-	-0-	-0-	13.
	14. Advance	444,516.96	IN	303,345.05	-0-	-0-	4,298.69	18,511.00	-0-	-0-	118,362.22	14.
	15. Line 13 — Line 14	12,021,691.84		10,564,247.95	198,779.88	145,518.40	125,558.35	1,105,949.48	-0-	-0-	- 118,362.22	15.
	16. Collected during year	56,354,344.93	COLUMN (3)	38,431,248.70	661,310.36	459,427.78	2,264,443.56	9,039,860.02	175,104.76	-0-	5,322,949.75	16.
	17. Line 15 + Line 16	68,376,036.77		48,995,496.65	860,090.24	604,946.18	2,390,001.91	10,145,809.50	175,104.76	-0-	5,204,587.53	17.
	18. Previous year (uncollected + deferred — advance)	11,436,317.37		10,120,267.09	193,098.66	134,220.39	124,312.38	984,585.04	-0-	-0-	- 120,166.19	18.
	19. Renewal premiums and considerations Line 17 — Line 18	56,939,719.40		38,875,229.56	666,991.58	470,725.79	2,265,689.53	9,161,224.46	175,104.76	-0-	5,324,753.72	19.
	TOTAL											
	20. Total premiums and annuity considerations Lines 9, 10 and 19 (to agree with Item 1, Page 4)	63,430,089.25		44,602,519.73	775,932.64	562,657.17	2,827,896.77	9,161,224.46	175,104.76	-0-	5,324,753.72	20.
		PART 2—Dividends Applied, Reinsurance Ceded and Commissions Incurred										
	DIVIDENDS APPLIED (Included in Part 1)											
	21. To pay renewal premiums (Exhibit 7, Line 1)	-0-		-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	21.
	22. All other (Exhibit 7, Lines 2, 3 and 4)	106.88		106.88	-0-	-0-	-0-	-0-	-0-	-0-	-0-	22.
	REINSURANCE CEDED (Deducted in Part 1)		N									
	23. First year (other than single)	39,893.90	O	39,253.47	70.54	569.89	-0-	-0-	-0-	-0-	-0-	23.
	24. Single	-0-		-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	24.
	25. Renewal	38,440,978.85	N	455,146.58	2,552.00	9,311.49	-0-	30,221.13	-0-	35,152,730.59	2,791,017.06	25.
	26. Total	38,480,872.75		494,400.05	2,622.54	9,881.38	-0-	30,221.13	-0-	35,152,730.59	2,791,017.06	26.
	COMMISSIONS INCURRED		E									
	27. First year (other than single)	4,930,377.04		4,721,933.43	88,216.90	76,948.22	43,278.49	-0-	-0-	-0-	-0-	27.
	28. Single	21,336.99		2,653.59	-0-	-0-	18,683.40	-0-	-0-	-0-	-0-	28.
	29. Renewal	3,232,735.17		2,357,071.90	40,176.15	28,368.90	20,606.76	222,067.74	21,155.67	-0-	543,288.05	29.
	30. Total (to agree with Item 21, Page 5)	8,184,449.20		7,081,658.92	128,393.05	105,317.12	82,568.65	222,067.74	21,155.67	-0-	543,288.05	30.

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

EXHIBIT 2—NET INVESTMENT INCOME
(Accrual Basis)

		DOLLARS	CENTS
1.	Total interest, dividends and real estate income (Exhibit 3, Col. 7, Line 10)	20,138,578	.46
2.	Investment expenses (Exhibit 5, Col. 3, Line 13)	1,637,333	.72
3.	Taxes, licenses and fees, excluding federal income taxes (Exhibit 6, Col. 3, Line 10)	255,922	.89
4.	Depreciation on real estate	606,923	.59
5.			
6.	TOTAL (Lines 2 to 5 inclusive)	2,500,180	.20
7.	NET INVESTMENT INCOME — Line 1 less Line 6 (to Item 4, Page 4)	17,638,398	.26
8.	Ratio of net investment income to mean assets (see instructions)	4.20	%

EXHIBIT 3—INTEREST, DIVIDENDS AND REAL ESTATE INCOME

		COLLECTED DURING YEAR (1)	CURRENT YEAR UNEARNED (2)	CURRENT YEAR DUE (3)	CURRENT YEAR ACCRUED (4)	CURRENT YEAR NON-ADMITTED† (5)	PREVIOUS YEAR (3)+(4)−(2)−(5) (6)	EARNED DURING YEAR (1)−(2)+(3)+(4)−(5)−(6) (7)
1.	Interest on bonds	8,538,275.15	-0-	-0-	2,413,395.16	4,218.75	2,379,488.65	8,567,962.91
2.	Dividends on stocks	‡ 1,845,151.69	-0-	-0-	-0-	-0-	-0-	1,845,151.69
3.	Interest on mortgage loans	** 6,068,665.63	1,845.40	57,726.47	496,964.36	2,400.37	456,727.03	6,162,383.66
4.	Real estate income	*** 2,095,567.25	3,348.39	-0-	-474.17	-0-	-4,177.50	2,095,922.19
5.	Interest on premium notes, policy loans and liens	1,470,685.65	380,621.53	19,039.40	260.82	-0-	-344,971.03	1,454,335.37
6.	Interest on collateral loans	-0-	-0-	-0-	-0-	-0-	-0-	-0-
7.	Interest on bank deposits	-0-	-0-	-0-	-0-	-0-	-0-	-0-
8.	Interest in advance to Managers	7,908.63	-0-	-0-	-0-	-0-	-0-	7,908.63
9.	Interest on Premiums	4,914.01	-0-	-0-	-0-	-0-	-0-	4,914.01
9.1	Other invested assets	-0-	-0-	-0-	-0-	-0-	-0-	-0-
10.	TOTALS	20,031,168.01	385,815.32	76,765.87	2,910,146.17	6,619.12	2,487,067.15	20,138,578.46

*Includes $ 41,670.44 accrual of discount less $ 75,365.10 amortization of premium and less $ 7,345.10 paid for accrued interest on purchases.

‡Excludes $ 2,402.22 paid for accrued dividends on purchases.

**Includes $ 205,942.59 accrual of discount less $ 16,654.50 amortization of premium and less $ 67,602.61 paid for accrued interest on purchases.

***Includes $ 436,068.46 for company's occupancy of its own buildings; and excludes $ 1,903.13 interest on encumbrances.

†State bases of exclusions:
Bonds non-amortizable bond
Stocks
Mortgage loans loans in foreclosure
Real estate
Collateral loans
Bank deposits
Other invested assets

*EXHIBIT 4—CAPITAL GAINS AND LOSSES ON INVESTMENTS

		INCREASE IN BOOK VALUE (1)	PROFIT ON SALE OR MATURITY (2)	DECREASE IN BOOK VALUE (3)	LOSS ON SALE OR MATURITY (4)	NET GAIN (+) OR LOSS (−) FROM CHANGE IN DIFFERENCE BETWEEN BOOK AND ADMITTED VALUES (5)	NET GAINS (+) OR LOSSES (−) (1)+(2)−(3)−(4)+(5) (6)
1.	Bonds	-0-	48,805.62	-0-	2,499.24	-57,500.00	-11,193.62
2.	Stocks	-0-	1,307,280.14	-0-	38,489.80	2,717,993.46	3,986,783.80
3	Mortgage loans	-0-	61,717.49	-0-	-0-	-0-	61,717.49
4.	Real estate	-0-	1,921.25	** -0-	-0-	-0-	1,921.25
5.	Premium notes, policy loans and liens	-0-	-0-	-0-	-0-	-0-	-0-
6.	Collateral loans	-0-	-0-	-0-	-0-	-0-	-0-
7.	Cash and bank deposits	105.75	-0-	-0-	-0-	-0-	105.75
8.	Foreign exchange	X X X	X X X	X X X	X X X	-11,953.54	-11,953.54
9.							
9.1	Other invested assets	-0-	-0-	-0-	-0-	-0-	-0-
10.	TOTALS	105.75	1,419,724.50	-0-	40,989.04	2,648,539.92	4,027,381.13
10.1	Less Federal income taxes incurred on capital gains (show figure in Col. 6)						-0-
10.2	Balance to Surplus Account, Page 4 (show figure in Col. 6)						4,027,381.13

DISTRIBUTION OF LINE 10.2, COL. (6). (Attach statement or memorandum explaining basis of division.)

11.	Net realized capital gains (+) or losses (−) on assets disposed of during the year $ 1,378,735.46, less $ -0- reflected in previous years' statements and less $ -0- federal income tax incurred on capital gains	1,378,735.46
12.	Net unrealized capital gains (+) or losses (−) of the year	2,648,645.67

*Adjustments due to amortization to be reported in Exhibit 3.

**Excluding $ 606,923.59 depreciation on real estate included in Exhibit 2, Line 4.

EXHIBIT 5—GENERAL EXPENSES

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

		INSURANCE		INVESTMENT	TOTAL
		LIFE (1)	ACCIDENT AND HEALTH (2)	(3)	(4)
1.	Rent	412,084.21	43,263.99	37,580.25	492,928.45
2.	Salaries and wages	3,285,973.90	325,846.52	371,074.82	3,982,895.24
3.11	*Contributions for benefit plans for employees	306,565.82	26,151.83	30,748.99	363,466.64
3.12	*Contributions for benefit plans for agents	3,028.01	128.83	-0-	3,156.84
3.21	Payments to employees under non-funded benefit programs	-0-	-0-	-0-	-0-
3.22	Payments to agents under non-funded benefit programs	-0-	-0-	-0-	-0-
3.31	Other employee welfare	26,591.46	2,756.66	2,262.91	31,611.03
3.32	Other agent welfare	-0-	-0-	-0-	-0-
3.4					
4.1	Legal fees and expenses	71,383.43	27.16	841.50	72,252.09
4.2	Medical examination fees	187,357.38	1.22	.52	187,359.12
4.3	Inspection report fees	177,569.06	30.45	152.26	177,751.77
4.4	Fees of public accountants and consulting actuaries	22,139.27	618.23	87.37	22,844.87
4.5	Expense of investigation and settlement of policy claims	23,234.23	34,817.31	-0-	58,051.54
4.6					
5.1	Traveling expenses	263,260.36	18,586.43	19,953.53	301,800.32
5.2	Advertising	344,026.33	256.72	73.45	344,356.50
5.3	Postage, express, telegraph and telephone	199,476.17	30,669.85	14,585.69	244,731.71
5.4	Printing and stationery	312,191.32	22,685.78	16,281.93	351,149.03
5.5	Cost or depreciation of furniture and equipment	272,842.83	28,608.09	18,746.61	320,197.53
5.6	Rental of equipment	111,289.39	7,894.89	6,078.05	125,262.33
5.7					
6.1	Books and periodicals	12,608.85	181.36	1,688.02	14,478.23
6.2	Bureau and association dues	61,842.86	21.09	562.63	62,426.58
6.3	Insurance, except on real estate	14,325.61	702.96	4,747.07	19,775.64
6.4	Miscellaneous losses	331.40	-0-	-0-	331.40
6.5	Collection and bank service charges	5,947.31	587.06	2,551.90	9,086.27
6.6	Sundry general expenses	32,381.93	449.34	6,881.55	39,712.82
6.7	Group service and administration fees	114,544.45	-0-	-0-	114,544.45
6.8	Contributions to charitable organizations	112,723.96	81.66	122.72	112,928.34
7.1	Agency expense allowance	412,886.93	179.39	.27	413,066.59
7.2	Agents' balances charged off (less $ -0- recovered)	1,642.28	-0-	-0-	1,642.28
7.3	Agency conferences other than local meetings	25,709.23	1,570.98	33.55	27,313.76
8.1	Merchandise for production awards	126,082.98	-0-	-0-	126,082.98
8.2	Allowance for reinsurance assumed	- 8,380.35	-0-	-0-	- 8,380.35
9.1	Real estate expenses	-0-	-0-	580,864.63	580,864.63
9.2	Investment expenses not included elsewhere	-0-	-0-	496,237.85	496,237.85
9.3	Reimbursement on reinsurance ceded	- 1,090.00	-0-	-0-	- 1,090.00
10.	GENERAL EXPENSES PAID	6,930,560.61	546,117.80	1,612,158.07	9,088,836.48 (To Line 27, Exhibit 12)
11.	General expenses unpaid December 31, current year	461,181.10	71,671.41	67,355.47	600,207.98
12.	General expenses unpaid December 31, previous year	357,536.89	66,978.08	42,179.82	466,694.79
13.	General expenses incurred during year (10+11—12)	7,034,204.82 (To Item 23, Page 4)	550,811.13	1,637,333.72 (To Line 2, Exhibit 2)	9,222,349.67

A. Compensation to agents on a plan other than commissions, included in Col. (1): First year $ 126,082.98 , Renewal $ -0-

B. Agency supervision, except Home Office, included in Col. (1): Line 2 $ 50,582.06 , Line 5.1 $ -0- , Line 7.3 $ 15,833.74

C. Branch office expenses other than those in A and B included in Col. (1): Line 1 $ 11,640.93 , Line 2 $ 82,119.78 , All other lines $ 89,733.03

*These items include $ -0- on account of prior service.

EXHIBIT 6—TAXES, LICENSES AND FEES (EXCLUDING FEDERAL INCOME TAXES)

		INSURANCE		INVESTMENT	TOTAL
		LIFE (1)	ACCIDENT AND HEALTH (2)	(3)	(4)
1.	Real estate taxes	-0-	-0-	252,116.06	252,116.06
2.	State insurance department licenses and fees	20,960.58	410.34	-0-	21,370.92
3.	State taxes on premiums	1,059,294.92	123,757.99	-0-	1,183,052.91
4.	Other state taxes, incl. $ 16,375.14 Social Security	18,564.73	1,780.73	-0-	20,345.46
5.	U. S. Social Security taxes	113,846.95	11,521.74	-0-	125,368.69
6.	All other taxes	50,595.19	1,064.90	-0-	51,660.09
7.	TAXES, LICENSES AND FEES PAID	1,263,262.37	138,535.70	252,116.06	1,653,914.13 (To Line 28.1, Exhibit 12)
8.	Taxes, licenses and fees unpaid December 31, current year	1,022,506.62	108,004.19	62,664.44	1,193,175.25
9.	Taxes, licenses and fees unpaid December 31, previous year	933,732.55	118,736.42	58,857.61	1,111,326.58
10.	Taxes, licenses and fees incurred during year (7+8—9)	1,352,036.44 (To Item 24, Page 4)	127,803.47	255,922.89 (To Line 3, Exhibit 2)	1,735,762.80

NOTE: Canadian and other foreign taxes are included appropriately in Lines 1, 2, 3, 4 and 6.

EXHIBIT 7—DIVIDENDS TO POLICYHOLDERS

		LIFE	ACCIDENT AND HEALTH
1.	Applied to pay renewal premiums	-0-	-0-
2.	Applied to shorten the endowment or premium-paying period	-0-	-0-
3.	Applied to provide paid-up additions	106.88	-0-
4.	Applied to provide paid-up annuities	-0-	-0-
5.	TOTAL LINES 1-4	106.88	-0-
6.	Paid in cash	24,591.74	-0-
7.	Left on deposit with the company	515.72	-0-
8.			
9.	TOTAL LINES 5-8	25,214.34	-0-
10.	Amount due and unpaid (Item 6, page 3)	-0-	-0-
11.	Provision for annual dividend policies, including $ -0- terminal dividends (Item 7, page 3, in part)	34,566.85	-0-
12.	Provision for deferred dividend policies (Item 7, page 3, in part)	-0-	-0-
13.	TOTAL LINES 10-12	34,566.85	-0-
14.	Line 13 of previous year	24,889.64	-0-
15.	TOTAL DIVIDENDS TO POLICYHOLDERS (Lines 9+13—14)	34,891.55 (To Item 29, Page 4)	-0- (To Item 30, Page 4)

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

EXHIBIT 8—AGGREGATE RESERVE FOR LIFE POLICIES AND CONTRACTS

Valuation Standard (Indicate mortality and interest bases and valuation method by years of issue and in the case of annuities indicate whether immediate, deferred or both) (1)	Total (2)	Industrial (3)	Ordinary (4)	Group (5)
A. Life Insurance:				
1. Am. Exp. 3½% Net Level 1926-1941	40,055,014		40,055,014	
2. Standard Intermediate 3½% Net Level 1936-1941	117,486		117,486	
3.				
4. Am. Exp. 3.00% Net Level 1942-1947	98,032,838		98,032,838	
5. 1941 C.S.O. 3.00% Net Level 1947-1963 NB	5,775,889		5,775,889	
6. 1941 C.S.O. 3.00% Canadian Std. 1960-1963 NB	228,451		228,451	
7. 1941 Std. Industrial 3.00% N.L. 1947-1955	22,590	22,590		
8. 1941 Sub Std. Industrial 3.00% N.L. 1947-1955	5,588	5,588		
9. 1941 C.S.O. 3.00% N.J. Std. 1960-1963 NB	5,409,456		5,409,456	
10. 1941 C.S.O. 3.00% Unearned Premium 1944-1963 NB	247,934			247,934
11.				
12.				
13. 1941 C.S.O. 2½% CRVM 1960-1963 NB	8,635,897		8,635,897	
14. 1941 C.S.O. 2½% Net Level 1948-1963 NB	150,444,111		150,444,111	
15. 1941 C.S.O. 2½% Canadian Std. 1960-1963 NB	46,803		46,803	
16.				
17. Reserve for Extra Premium Ratings 1926-1963 NB	236,079		236,079	
18. Reserve for Conversion	646,331		646,331	
19.				
20.				
21.				
22.				
23. Total (Gross)	309,904,517	28,178	309,628,405	247,934
24. Reinsurance ceded	312,785	-0-	312,785	-0-
25. Total (Net)	309,591,732	28,178	309,315,620	247,934
B. Annuities (excluding supplementary contracts with life contingencies):				
1. Immediate:		X X X		
2. American Annuitants Table 3½%	33,995	X X X	33,995	
3. 1937 Standard Annuity Table 3.00% NB	645,610	X X X	645,610	
4. 1937 Standard Annuity Table 2½%	6,104,495	X X X	6,104,495	
5. 1951 G.A. 3½%	102,438	X X X		102,438
6.		X X X		
7.		X X X		
8. Deferred Retirement Annuities:		X X X		
9. 3½% NB	1,270,628	X X X	1,270,628	
10. 3.00% NB	4,096,630	X X X	4,096,630	
11. 2½%	18,068,811	X X X	18,068,811	
12.		X X X		
13.		X X X		
14.		X X X		
15. Canadian Employees Retirement Fund Accumu-		X X X		
16. lating at Varying Interest Rate	342,331	X X X		342,331
17.		X X X		
18.		X X X		
19.		X X X		
20.		X X X		
21.		X X X		
22.		X X X		
23. Total (Gross)	30,664,938	X X X	30,220,169	444,769
24. Reinsurance ceded	-0-	X X X	-0-	-0-
25. Total (Net)	30,664,938	X X X	30,220,169	444,769
C. Supplementary Contracts With Life Contingencies:				
1. 1937 Standard Annuity @ 2.00%	5,239		5,239	
2. 1937 Standard Annuity @ 2½%	2,788,977		2,788,977	
3. 1937 Standard Annuity @ 3.00%	126,796		126,796	
4. 1941 C.S.O. @ 2½%	153,907		153,907	
5. Total (Gross)	3,074,919		3,074,919	
6. Reinsurance ceded	-0-		-0-	
7. Total (Net)	3,074,919		3,074,919	
D. Accidental Death Benefits:				
1. 1926-33 Inter-Company Table @ 2½%	515,196		515,196	
2.				
3.				
4.				
5. Total (Gross)	515,196		515,196	
6. Reinsurance ceded	4,878		4,878	
7. Total (Net)	510,318		510,318	
E. Disability—Active Lives:				
1. 150% and 165% Class III Table @ 2½%	1,137,410		1,137,410	
2. 100% Class III Table @ 3.00%	111,297		111,297	
3. Unearned Premiums - Payor Waiver	78,433		78,433	
4.				
5.				
6.				
7. Total (Gross)	1,327,140		1,327,140	
8. Reinsurance ceded	5,548		5,548	
9. Total (Net)	1,321,592		1,321,592	
F. Disability—Disabled Lives:				
1. Class III @ 3.00%	8,356		8,356	
2. Class III @ 2½%	850,791		850,791	
3. C.S.O. @ 2½%	9,895		9,895	
4. Incomplete or Unreported	183,559		183,559	
5. 150% 1941 C.S.O. @ 2½%	924,050			924,050
6.				
7. Total (Gross)	1,976,651		1,052,601	924,050
8. Reinsurance ceded	90,797		90,797	-0-
9. Total (Net)	1,885,854		961,804	924,050

UNITED BENEFIT LIFE INSURANCE COMPANY

Page 11 - Item 7

Special class cases prior to 1948 were issued on multiple mortality tables and are so valued. Special class cases issued subsequently are valued on standard tables, and an additional reserve equal to 65% of the gross extra premiums in force is set up. Extra premiums for occupation only are considered to cover a hazard which is either level or increases so slightly with advancing age of the insured that it is more than offset by the reducing net at risk. For that reason an additional reserve of 50% of the extra premiums is used.

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

EXHIBIT 8—AGGREGATE RESERVE FOR LIFE POLICIES AND CONTRACTS (Continued)

Valuation Standard (Indicate mortality and interest bases and valuation method by years of issue) (1)	Total (2)	Industrial (3)	Ordinary (4)	Group (5)
G. Miscellaneous Reserves:				
1. For excess of valuation net premiums over corresponding gross premiums on respective policies, computed according to the standard of valuation required by this state	4,889,936		4,889,936	
2. For non-deduction of deferred fractional premiums or return of premiums at the death of the insured	656,790		656,790	
3. For surrender values in excess of reserves otherwise required and carried in this schedule				
4.				
5.				
6.				
7. Total (Gross)	5,546,726		5,546,726	
8. Reinsurance ceded	-0-		-0-	
9. Total (Net)	5,546,726		5,546,726	
H. Grand Total (Net)—Item 1, Page 3	352,596,079	28,178	350,951,148	1,616,753

EXHIBIT 8A—CHANGES IN BASES OF VALUATION DURING THE YEAR
(Including supplementary contracts set up on a basis other than that used to determine benefits)

	Description of Valuation Class	Valuation Bases Changed from	Valuation Bases Changed to	Increase in Actuarial Reserve Due to Change
1.	Deferred Annuities Going into Benefit	Various	1937 Std.Ann. 2½&3.00%	24,734
2.	Supplementary Contracts with Life Contingencies (New)	Various	1937 Std.Ann. 2½&3.00%	8,043
3.	Supplementary Contracts without Life Contingencies (New)	3.00%	2½	652
4.				
5.				
6.				
7.	Total (to agree with Item 7, Page 6)			33,429

GENERAL INTERROGATORIES

1. Has the company ever issued both participating and non-participating policies? Answer: No *See Below
2. Does the company at present issue both participating and non-participating policies? Answer: No
   If not, state which kind is issued.
   Answer: Non-participating Only
3. State the amount of insurance, if any, on which the gross premiums are less than the net premiums according to the standard of valuation required by this State.
   Answer: $ 230,614,001
   The additional reserve to cover deficiencies in gross premiums must be included in Exhibit 8. If not reported in G. 1. above, state amount $
4. Does the Company waive deduction of deferred fractional premiums at death on any of its business?
   Answer: Yes
5. State the amounts of insurance in force under each of the following plans:

	Non-Participating	Participating Annual Div.	Participating Def. Div.
Industrial	357,700		
Ordinary	1,790,876,782	41,108,327	52,000
Group	1,457,172,587		
Totals	3,248,407,069	41,108,327	52,000

6. Is any surrender value promised in excess of the reserve as legally computed? Answer: No If so, the amount of such excess must be included in G.3 above. Has this been done? Answer:
7. Attach statement of methods employed in the valuation of policies issued at, or subsequently subject to, an extra premium or in the valuation of policies otherwise issued on lives classed as substandard for the plan of contract issued or on special class lives (including paid-up insurance).
8. Has the company any assessment or stipulated premium policies in force?
   Answer: No If so, state:
   Amount of insurance $
   Amount of reserve $
   Basis of reserve:
   Basis of regular assessments:
   Basis of special assessments:
   Assessments collected during year $

EXHIBIT 9—AGGREGATE RESERVE AND POLICY CLAIM LIABILITY FOR ACCIDENT AND HEALTH POLICIES

	Total (1)	Group Accident and Health (2)	Individual Policies: Accident Only (3)	Individual Policies: Accident and Health (4)	Individual Policies: Non-Cancellable Accident and Health (5)	Individual Policies: Hospital and Medical Expenses (6)
PART 1—Aggregate Reserve						
1. Unearned premium reserve	2,536,617.55	220,194.00	1,457.07	948,823.14	51,930.33	1,314,213.01
2. Additional reserves for guaranteed renewable policies*	562,825.00	-0-	-0-	320,408.29	242,416.71	-0-
3. Present value of amounts not yet due on claims	4,973,014.05	106,669.44	-0-	4,323,726.83	53,968.55	488,649.23
4. Reserve for future contingent benefits (deferred maternity and other similar benefits)	945,619.60	945,619.60	-0-	-0-	-0-	-0-
5. Retrospective Rating	569,472.94	569,472.94	-0-	-0-	-0-	-0-
6.						
7. Total (Gross)	9,587,549.14	1,841,955.98	1,457.07	5,592,958.26	348,315.59	1,802,862.24
8. Reinsurance ceded	3,801,911.98	1,841,955.98	99.87	964,613.55	285,520.24	709,722.34
9. Total (Net) (to Item 2, Page 3)	5,785,637.16	-0-	1,357.20	4,628,344.71	62,795.35	1,093,139.90
PART 2—Policy Claim Liability End of Current Year						
1. Due and unpaid	1,050,865.70	955,458.95	3,786.35	65,921.13	1,567.46	24,131.81
2. In course of settlement	2,337,106.81	1,047,139.97	2,667.60	805,758.62	35,056.42	446,484.20
3. Incurred but unreported (less reinsurance ceded)	† 399,450.49	-0-	427.79	233,236.22	1,211.76	164,574.72
4. Total	3,787,423.00	2,002,598.92	6,881.74	1,104,915.97	37,835.64	635,190.73
5. Less amounts recoverable on unpaid losses for reinsurance ceded (Schedule S)	2,420,748.97	2,002,598.92	4,786.35	214,908.43	15,996.33	182,458.94
6. Net Liability (to Item 4.2, Page 3)	1,366,674.03	-0-	2,095.39	890,007.54	21,839.31	452,731.79

*Attach statement as to valuation standard used in calculating this reserve.

†Include portion of liability applicable to assume "accrued" payments. Reserve for unaccrued payments appears in Item 2, Page 3 (see Part 1).

EXHIBIT 10—SUPPLEMENTARY CONTRACTS WITHOUT LIFE CONTINGENCIES AND DIVIDEND ACCUMULATIONS

	Valuation Rate (1)	Contract Rate or Rates ‡ (2)	Supplementary Contracts without Life Contingencies: Present Value of Amounts Not Yet Due (3)	Supplementary Contracts without Life Contingencies: Amounts Left on Deposit (4)	Supplementary Contracts without Life Contingencies: Totals (5)	Dividend Accumulations (6)
1.	0	0	-0-	-0-	-0-	-0-
2.	2	2	481,840	346,871	828,711	-0-
3.	2½	2½, 3, 3½, 4	2,207,567	112,361	2,319,928	-0-
4.	3	3	235,657	623,405	859,062	-0-
5.	3½	2, 2½, 3, 3½	30,960	583,332	614,292	18,744
6.	4	4	-0-	-0-	-0-	2,738
7.	Totals (as per Items 3 and 5, Page 3)		2,956,024	1,665,969	4,621,993	21,482

‡Show contract rate or rates corresponding to each valuation rate.

*Certain non-participating limited payment life policies no longer issued contained provision for payment, after becoming fully paid, of such dividend as may be declared by the Board of Directors.

EXHIBIT 11—POLICY AND CONTRACT CLAIMS FOR OTHER THAN ACCIDENT AND HEALTH POLICIES

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

PART 1—Liability End of Current Year

	Total (1)	Industrial Life (Including Total and Permanent Disability and Accidental Death Benefits) (2)	Ordinary: Life Insurance (3)	Ordinary: Total and Permanent Disability (4)	Ordinary: Additional Accidental Death (5)	Ordinary: Individual Annuities (6)	Ordinary: Supplementary Contracts (7)	Group: Life Insurance (8)	Group: Annuities (9)
1. Due and unpaid	-0-		-0-	-0-	-0-	-0-	-0-	-0-	-0-
2. In course of settlement:									
2.1 Resisted	124,290.00	INCLUDED	63,790.00	† -0-	-0-	-0-	-0-	60,500.00	-0-
2.2 Other	1,402,112.01	IN	888,712.47	† 807.40	67,960.00	70,210.24	-0-	374,421.90	-0-
3. Incurred but unreported (less reinsurance ceded)	1,290,185.17	COLUMN (3)	328,454.26	† 12,243.54	-0-	30,280.86	-0-	919,206.51	-0-
4. Total	2,816,587.18		1,280,956.73	13,050.94	67,960.00	100,491.10	-0-	1,354,128.41	-0-
5. Less amounts recoverable on unpaid losses for reinsurance ceded (Schedule S)	4,476.00		4,476.00	-0-	-0-	-0-	-0-	-0-	-0-
6. NET LIABILITY (Column 1 to Item 4.1, Page 3)	2,812,111.18		** 1,276,480.73	13,050.94	67,960.00	100,491.10	-0-	1,354,128.41	-0-

*Including matured endowments unpaid amounting to $ -0- **Including matured endowments unpaid amounting to $ 33,256.00

†Include only portion of liability applicable to assumed "accrued" payments. Reserve for unaccrued payments $ 182,990.00 appears in Item 1, Page 3. (See Exhibit 8, Section F.)

PART 2—Incurred During the Year

	Total (1)	Industrial Life (Including Total and Permanent Disability and Accidental Death Benefits) (2)*	Ordinary: Life Insurance (3)**	Ordinary: Total and Permanent Disability (4)	Ordinary: Additional Accidental Death (5)	Ordinary: Individual Annuities (6)	Ordinary: Supplementary Contracts (7)	Group: Life Insurance (8)	Group: Annuities (9)
1. Settlements during the year	22,357,177.68		12,098,600.78	177,132.16	256,601.00	1,944,898.04	1,091,634.63	6,780,256.10	8,054.97
2. Deduct reinsurance ceded	302,195.04	INCLUDED	261,335.00	14,110.04	-0-	-0-	-0-	26,750.00	-0-
3. Net settlements (Line 1 minus Line 2)	† 22,054,982.64	IN	11,837,265.78	163,022.12	256,601.00	1,944,898.04	1,091,634.63	6,753,506.10	8,054.97
4. Net liability December 31, current year from Part 1	2,812,111.18	COLUMN (3)	1,276,480.73	13,050.94	67,960.00	100,491.10	-0-	1,354,128.41	-0-
5. Amounts recoverable on paid losses for reinsurance ceded December 31, previous year	2,680.00		2,680.00	-0-	-0-	-0-	-0-	-0-	-0-
6. Line 3 plus Line 4 plus Line 5	24,869,773.82		13,116,426.51	176,073.06	324,561.00	2,045,389.14	1,091,634.63	8,107,634.51	8,054.97
7. Net liability December 31, previous year	2,362,523.78		996,003.05	10,943.20	25,166.00	71,589.64	-0-	1,258,821.89	-0-
8. Amounts recoverable on paid losses for reinsurance ceded December 31, current year (Schedule S)	7,446.00		1,446.00	-0-	-0-	-0-	-0-	6,000.00	-0-
9. Line 7 plus Line 8	2,369,969.78		997,449.05	10,943.20	25,166.00	71,589.64	-0-	1,264,821.89	-0-
10. NET INCURRED CLAIMS (Line 6 minus Line 9)	22,499,804.04		12,118,977.46	165,129.86	299,395.00	1,973,799.50	1,091,634.63	6,842,812.62	8,054.97

*Including matured endowments amounting to $ -0- in Line 1 and $ -0- in Line 10. **Inciuding matured endowments amounting to $ 2,362,036.90 in Line 1 and $ 2,364,796.90 in Line 10.

†Equals sum of Lines 16.1 17 and 22, Exhibit 12. Includes $ 121,075.39 premiums waived under total and permanent disability benefits.

EXCEPT FOR ITEMS 14A, 15, 37A AND 38-41, THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

EXHIBIT 12—RECONCILIATION OF LEDGER ASSETS

			DOLLARS	CENTS
INCREASES IN LEDGER ASSETS				
1.	Premiums on life policies and annuity considerations (see Exhibit 1, Part 1)		57,362,749.15	
2.	Accident and health cash premiums, including $ -0- policy, membership and other fees		5,322,949.75	
3.	Consideration for supplementary contracts with life contingencies		169,173.33	
4.	Consideration for supplementary contracts without life contingencies including $ -0- disability		1,030,340.46	
5.	Dividends left with the Company to accumulate at interest		515.72	
6.	Interest, dividends and real estate income (Exhibit 3, Column 1)		20,031,168.01	
7.	Increase of paid-up capital during the year		-0-	
8.	From other sources (give items and amounts):			
8.1	Coupon Deposits $5,682.28; Accumulated Savings Fund $1,448.69		7,130.97	
8.2	Separate Account Expense Allowance		25,078.53	
8.3	Deposit Administration Funds		739,103.25	
9.	Borrowed money gross $ -0-, less amount repaid $ -0-		-0-	
10.	Sundry Receipts		13,036.58	
11.				
12.				
13.	From sale or maturity of ledger assets (Exhibit 4, Column 2)		1,419,724.50	
14.	By adjustment in book value of ledger assets (Exhibit 4, Column 1)		105.75	
14A.	Separate Account Business (see Separate Account Statement)		102,737.21	
15.	TOTAL INCREASES IN LEDGER ASSETS		86,214,813.21	
DECREASES IN LEDGER ASSETS				
16.	Policy and contract claims:			
16.1	Life (see Exhibit 11, Part 2)	19,010,395.00		
16.2	Accident and health	3,853,971.01		
17.	For annuities with life contingencies, excluding payments on supplementary contracts (including cash refund payments)	1,952,953.01		
18.	Premium notes and liens voided by lapse, less $ -0- restorations	-0-		
19.	Surrender values	7,694,624.70		
19A.	Group conversions	21,800.88		
19B.	Interest on policy or contract funds	36,252.36		
20.	Dividends to policyholders:			
20.1	Life insurance and annuities (Exhibit 7)	25,214.34		
20.2	Accident and health (Exhibit 7)	-0-		
21.	TOTAL PAID POLICYHOLDERS		32,595,211.30	
22.	Paid for claims on supplementary contracts:			
22.1	With life contingencies	262,789.41		
22.2	Without life contingencies	828,845.22	1,091,634.63	
23.	Dividends and interest thereon held on deposit disbursed during the year		1,433.65	
24.	Decrease in ledger liabilities		90,992.16	
25.				
26.	Commissions to agents (less commissions on reinsurance):			
26.1	Life insurance and annuities (including $ -0- commuted commissions)	7,520,608.37		
26.2	Accident and health (including $ -0- commuted commissions)	543,553.80		
26.3	Policy, membership and other fees retained by agents	-0-	8,064,162.17	
27.	General expenses (Exhibit 5, Line 10)		9,088,836.48	
28.1	Taxes, licenses and fees, excluding federal income taxes (Exhibit 6, Line 7)		1,653,914.13	
28.2	Federal income taxes (including $ -0- on capital gains)		1,858,765.40	
29.	Decrease of paid-up capital during the year		-0-	
30.	Paid stockholders for dividends (cash $ 500,000.00, stock $ -0-)		500,000.00	
31.	Borrowed money repaid gross $ -0- less amount borrowed $ -0-		-0-	
32.	Interest on borrowed money		-0-	
33.	Coupons $7,787.80; Accumulated Savings $7,573.51		15,361.31	
34.	Prior year expense adjustment		7,844.68	
35.	Payments made on territories transferred		76,906.93	
36.	From sale or maturity of ledger assets (Exhibit 4, Column 4)		40,989.04	
37.	By adjustment in book value of ledger assets (Exhibit 4, Column 3 and Exhibit 2, Line 4)		606,923.59	
37A.	Separate Account Business (see Separate Account Statement)		29,139.73	
38.	TOTAL DECREASES IN LEDGER ASSETS		55,722,115.20	
RECONCILIATION BETWEEN YEARS				
39.	Amount of ledger assets December 31st of previous year		397,709,670.97	
40.	Increase (+) or decrease (—) in ledger assets during the year (Line 15 minus Line 38)		30,492,698.01	
41.	TOTAL = LEDGER ASSETS DECEMBER 31ST OF CURRENT YEAR		428,202,368.98	

EXCEPT FOR ITEMS 25A AND 26, THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

EXHIBIT 13—ASSETS

	Ledger Assets (1)	Non-Ledger Assets (2)	Assets Not Admitted (3)	Net Admitted Assets (4)
1. Bonds	225,242,162.26	-0-	117,500.00	225,124,662.26
2. Stocks	37,709,839.63	16,350,233.85	-0-	54,060,073.48
3. Mortgage loans on real estate:				
3.1 First liens	120,128,758.75	-0-	-0-	120,128,758.75
3.2 Other than first liens	-0-	-0-	-0-	-0-
4. Real estate (less $ 26,875.00 encumbrances):				
4.1 Properties occupied by the company	9,444,188.78	-0-	-0-	9,444,188.78
4.2 Properties acquired in satisfaction of debt	58,087.52	-0-	-0-	58,087.52
4.3 Investment real estate	3,498,813.55	-0-	-0-	3,498,813.55
5. Policy loans	27,597,973.77	-0-	-0-	27,597,973.77
6. Premium notes (including $ -0- for first year premiums)	-0-	-0-	-0-	-0-
7. Collateral loans	-0-	-0-	-0-	-0-
8. Cash and bank deposits:				
8.1 Cash in company's office	13,840.80	-0-	-0-	13,840.80
8.2 Deposits in banks and trust companies (Schedule E)	2,958,079.50	-0-	-0-	2,958,079.50
9. U. S. Premium Loans	1,538.94	-0-	-0-	1,538.94
10. Other invested assets	-0-	-0-	-0-	-0-
11. Amounts recoverable from reinsurers	-0-	7,446.00	-0-	7,446.00
12. Other assets (give items and amounts):				
12.1 Agents' balances (debit $228,763.36 credit $288,174.16	-59,410.80	-0-	-59,410.80	-0-
12.2 Bills receivable	16,025.00	-0-	16,025.00	-0-
12.3 Furniture and equipment	1,173,407.20	-0-	655,764.26	517,642.94
12.4 Cash advanced to or in hands of officers or agents	-0-	-0-	-0-	-0-
12.5 Loans on personal security, endorsed or not	-0-	-0-	-0-	-0-
12.6 Advance Traveling Expense	11,546.74	-0-	11,546.74	-0-
13. Managers Annuity Account	1,154.91	-0-	-0-	1,154.91
14. Premiums in course of collection	131,464.11	-0-	15,296.78	116,167.33
15.				
16.				
17. Life insurance premiums and annuity considerations deferred and uncollected on in force Dec. 31st of current year (less premiums on reinsurance ceded):				
17.1 Industrial uncollected (excluding $ -0- loading) -0-				
17.2 Ordinary deferred and uncollected—New business (excluding $ 1,152,565.30 loading) 741,273.09				
17.3 Ordinary deferred and uncollected—Renewal (excluding $ 1,459,455.29 loading) 9,882,293.03				
17.4 Group life deferred and uncollected (excluding $ 75,599.00 loading) 1,048,861.48				
17.5 Group annuity uncollected (excluding $ -0- loading) -0-				
17.6 TOTAL (to Col. 2)	-0-	11,672,427.60	-0-	11,672,427.60
18. Accident and health premiums due and unpaid	-0-	-0-	-0-	-0-
19. Interest and real estate income due and accrued:				
19.1 Interest due and accrued	-0-	2,987,386.21	6,619.12	2,980,767.09
19.2 Real estate income due and accrued	-0-	-474.17	-0-	-474.17
19.3				
20. Net adjustment in assets and liabilities due to foreign exchange rates	-0-	-0-	-0-	-0-
21.				
22.				
23.				
24.				
25.				
25A. Separate Account Business (see Separate Account Statement)	274,898.32	12,623.89	1,231.88	286,290.33
26. TOTALS	428,202,368.98	31,029,643.38	764,572.98	458,467,439.38

EXHIBIT 14—ANALYSIS OF NON-ADMITTED ASSETS AND RELATED ITEMS
(Excluding Investment Adjustments Not Listed)

	End of Previous Year (1)	End of Current Year (2)	Changes for Year Increase (—) or Decrease (+) (3)
27. Company's stock owned	-0-	-0-	X X X X X
28. Loans on company's stock	-0-	-0-	-0-
29. Supplies, stationery, printed matter	-0-	-0-	-0-
30. Furniture and equipment	851,562.93	655,764.26	195,798.67
31. Commuted commissions	-0-	-0-	X X X X X
32. Agents' balances (net)	-135,873.91	-59,410.80	-76,463.11
33. Cash advanced to or in the hands of officers or agents	-0-	-0-	-0-
34. Loans on personal security endorsed or not	-0-	-0-	-0-
35. Bills receivable	17,625.00	16,025.00	1,600.00
36. Premium notes, etc., in excess of net value and other policy liabilities on individual policies	-0-	-0-	X X X X X
37. Accident and health premiums due and unpaid, effective prior to October 1	-0-	-0-	-0-
38. Other assets not admitted (itemize)			
38.1 Advance Traveling Expenses	8,953.08	11,546.74	-2,593.66
38.2 Premiums in course of collection	16,290.05	15,296.78	993.27
38.3			
39. Agents' credit balances (Page 3, Item 10-void)	307,788.49	288,174.16	19,614.33
40. TOTAL CHANGE (Col. 3)*	X X X X X	X X X X X	138,949.50

*(Carry to Item 40, page 4 if (+), or to Item 47, page 4 if (—))

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

EXHIBITS OF INSURANCE POLICIES—PAID-FOR BUSINESS ONLY

ORDINARY BUSINESS

The following is a correct statement of the **ORDINARY** business of the year on policy account as it stood at close of business December 31. Additional accidental Death Benefits provided in life policies must **NOT** be included in this exhibit.

CLASSIFICATION	1. Whole Life and Endowment Policies (Excluding Group)		2. Term and Other Policies (Excluding Group), including Return Premium Additions		3. Group Policies			4. Additions to Policies by Dividends	5. Total Numbers and Amounts	
					Number of					
	No.	Amount	No.	Amount	Policies	Certificates	Amount	Amount	No. of Policies	Amount
1. At end of previous year	476,308	1,390,150,648	41,488	324,969,887	1,157	771,995	1,207,749,462	6,931	518,953	2,922,876,928
2. *Issued during year	38,289	210,802,361	8,267	104,461,181	399	54,645	§ 190,542,476	-0-	46,955	505,806,016
2A. †Reinsurance assumed	-0-	-0-	203	4,570,017	-0-	-0-	-0-	-0-	203	4,570,017
3. Revived during year	320	1,531,467	46	382,370	-0-	-0-	-0-	8	366	1,913,845
4. **Increased during year	-0-	3,656,224	-0-	372,933			16,755 88,932,044	170	-0-	92,861,371
4A. **Totals, lines 2 to 4, inclusive**	38,609	215,990,052	8,516	109,786,501	399	71,400	279,374,518	178	47,524	605,151,249
5. **Totals before transfers**	514,917	1,606,140,700	50,004	434,756,388	1,556	843,395	1,487,123,980	7,109		
TRANSFERS:										
6. Deductions	12,344	37,134,271	653	2,366,721	-0-	-0-	-0-	-0-	12,997	
7. Additions	9,708	28,591,194	3,318	10,909,798	-0-	-0-	-0-	-0-	13,026	
8. **Balance of transfers**	2,636	8,543,077	2,665	8,543,077	-0-	-0-	-0-	-0-	29	
9. **Totals after transfers**	512,281	1,597,597,623	52,669	443,299,465	1,556	843,395	1,487,123,980	7,109	566,506	3,528,028,177
DEDUCT CEASED BY:										
10. Death	3,395	9,040,656	167	1,027,666		1,724	6,739,869	63	3,562	16,808,254
11. Maturity	1,152	1,808,663	116	116,697		-0-	-0-	-0-	1,268	1,925,360
12. Disability	-0-	-0-	-0-	-0-		-0-	1,545	-0-	-0-	1,545
13. Expiry	-0-	-0-	2,265	5,131,625	-0-	-0-	-0-	-0-	2,265	5,131,625
14. Surrender	10,956	35,738,588	169	503,902	-0-	-0-	-0-	362	11,125	36,242,852
15. Lapse	16,832	82,499,236	5,347	55,555,482	241	7,632	23,209,979	-0-	22,420	161,264,697
16. Decrease	-0-	8,201,456	-0-	9,242,681		-0-	-0-	8	-0-	17,444,148
17. **Withdrawal*						-0-	-0-			-0-
17A. ‡Reinsurance ceded	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
18. **Total terminated**	32,335	137,288,599	8,064	71,578,056	241	9,356	29,951,393	433	40,640	238,818,481
19. (a) Outstanding end of year	479,946	1,460,309,024	44,605	371,721,409	1,315	§§ 834,039	1,457,172,587	6,676	525,866	3,289,209,696
20. Reinsurance ceded end of year	5	9,000	2,674	40,928,407	3	5,855	19,050,000	-0-	2,682	59,987,407

INDUSTRIAL BUSINESS

The following is a correct statement of the **INDUSTRIAL** business of the year on policy account as it stood at close of business December 31.

CLASSIFICATION	1. Whole Life and Endowment Policies		2. Term and Other Policies, including Return Premium Additions		3. Additions to Policies by Dividends	4. Total Numbers and Amounts	
	No.	Amount	No.	Amount	Amount	No.	Amount
21. At end of previous year	184	74,921	1,335	300,849	-0-	1,519	375,770
22. *Issued during year	-0-	-0-	-0-	-0-	-0-	-0-	-0-
22A. †Reinsurance assumed	-0-	-0-	-0-	-0-	-0-	-0-	-0-
23. Revived during year	-0-	-0-	-0-	-0-	-0-	-0-	-0-
24. Increased during year	-0-	-0-	-0-	-0-	-0-	-0-	-0-
24A. **Totals, lines 22 to 24, inclusive**	-0-	-0-	-0-	-0-	-0-	-0-	-0-
25. **Totals before transfers**	184	74,921	1,335	300,849	-0-		
26. Transfers, deductions	5	1,608	-0-	-0-	-0-	5	
27. Transfers, additions	-0-	-0-	5	1,608	-0-	5	
28. **Balance of Transfers**	5	1,608	5	1,608	-0-	-0-	
29. **Totals after transfers**	179	73,313	1,340	302,457	-0-	1,519	375,770
DEDUCT CEASED BY:							
30. Death	2	700	10	1,500	-0-	12	2,200
31. Maturity	-0-	-0-	-0-	-0-	-0-	-0-	-0-
32. Disability	-0-	-0-	-0-	-0-	-0-	-0-	-0-
33. Expiry	-0-	-0-	23	5,350	-0-	23	5,350
34. Surrender	-0-	-0-	-0-	-0-	-0-	-0-	-0-
35. Lapse	-0-	-0-	28	6,400	-0-	28	6,400
36. Decrease	-0-	-0-	-0-	4,120	-0-	-0-	4,120
36A. ‡Reinsurance ceded	-0-	-0-	-0-	-0-	-0-	-0-	-0-
37. **Total terminated**	2	700	61	17,370	-0-	63	18,070
38. (a) Outstanding end of year	177	72,613	1,279	285,087	-0-	1,456	357,700
39. Reinsurance ceded end of year							

NOTE.—Instalment policies and others involving supplementary contracts should be entered and deducted in above Exhibit of Policies for the commuted value of instalments only.

State the amount of (A) decreasing term insurance contained in Family Income, Mortgage Protection, etc., policies and riders, (B) additional insurance under non-decreasing term riders and (C) term insurance on wife and children under Family, Parent and Children, etc., policies and riders included above, as follows:
Line 2, Column 1 (A) None (B) None (C) 7,943,500, Column 2 (A) 33,910,496 Line 19, Column 1 (A) None (B) None (C) 24,379,170, Column 2 (A) 104,602,490

State basis of calculation under (A) Mean Commuted Value for Current Policy Year or 60% Initial Amount, and (C) Family Policy $1,000 Per Unit

*In this line should be included bona fide direct new business only. In case of Group policies, the initial coverage should be entered in this line. Paid-up and extended term insurance issued in lieu of other insurance should be treated as a policy change. Has this been done? ANSWER: Yes

(a) Paid-up insurance included in the final totals of items 19 and 38 (including additions to policies). No. of ORDINARY policies 63,323, amount $ 95,413,635; No. of INDUSTRIAL policies 52, amount, $ 21,483

Additional accidental Death Benefits included in life policies were in amount, $ 413,003,989; Debit Ordinary Business included in Column 5, Line 19: No. of policies None, amount $ None

†In this line should be reported all reinsurance assumed. Where the assumption of a block of business is involved, include such transaction herein, attaching exhibit indicating figures included in each line and column.

‡This is to include cession by reinsurance of the entire business of a company or of its business in a state or section of the country, but is not to include reinsurance ceded on individual risks.

**In case of Group policies, enter net of increases and withdrawals as positive figure in either item 4 or item 17.

§Includes $ 19,050,000 issued which was ceded as reinsurance during the year.

§§Includes 519,348 certificates under 4 policies for Group Insurance Plans, other than the Federal Employees Group Life Insurance Policy, where part of the insurance on each life is provided by policies of other insurance companies. After multiplying the number of certificates under each such policy by the respective proportions of the insurance provided by this company, the number of certificates under such policies changes from 519,348 to 38,792 and the total number of certificates outstanding changes from 834,039 to 353,483

Form 1

ANNUAL STATEMENT FOR THE YEAR 1963 OF THE UNITED BENEFIT LIFE INSURANCE COMPANY

Write or Stamp Name

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

EXHIBITS OF ANNUITIES (PAID-FOR BASIS) AND SUPPLEMENTARY CONTRACTS WITH LIFE CONTINGENCIES

CLASSIFICATION	1. Individual Annuities*		2. Group Annuities			3. Supplementary Contracts		
	No.	Annual Income	Contracts	Certificates	Annual Income	No.	Annual Income	
1. Outstanding at end of previous year	5,236	6,581,671	1	119	254,275	1,045	244,940	
2. Issued during year	431	579,425	2	21	33,928	• •	• • •	
3. Transferred from Insurance account during year	• •	• • •	• •	• •	• • •	106	12,980	
4. Total	5,667	7,161,096	3	140	288,203	1,151	257,920	
5. Other net changes during year	336	232,979	-0-	11	14,419	93	7,286	
6. Outstanding at end of current year	5,331	6,928,117	3	129	273,784	1,058	250,634	

CLASSIFICATION OF ANNUITIES AND SUPPLEMENTARY CONTRACTS WITH LIFE CONTINGENCIES OUTSTANDING AT THE END OF THE YEAR

CLASSIFICATION	1. Individual Annuities*		2. Group Annuities			3. Supplementary Contracts		Total	
	No.	Annual Income	Contracts	Certificates	Annual Income	No.	Annual Income	No.	Annual Income
7. Income now payable	1,038	610,769	• •	-0-	-0-	1,058	250,634	2,096	861,403
8. Deferred; fully paid	1,006	543,386	• •	-0-	-0-	-0-	-0-	1,006	543,386
9. Deferred; not fully paid	3,287	5,773,962	• •	129	273,784	-0-	-0-	3,287	6,047,746
10. Total	5,331	6,928,117	• •	129	273,784	1,058	250,634	6,389	7,452,535

*Individual Annuities. Include here all survivorship annuities and deferred annuities, including contracts providing for deferred annuities purchased by accumulations during deferred period and which provide for a death benefit during the period of deferment substantially equal to the value of the non-forfeiture benefit available on lapse.

THE INFORMATION ON THIS PAGE PERTAINS TO THE ENTIRE COMPANY BUSINESS, INCLUDING SEPARATE ACCOUNT BUSINESS, IF ANY.

GENERAL INTERROGATORIES

1. Have all the transactions of the company of which notice was received at the home office on or before the close of business December 31, been truthfully and accurately entered on its books? Answer: Yes

2. Except a hown in the next succeeding question, does this statement show the condition of the company as shown by the books, records, and data at the home office at the close of business December 31? Answer: Yes

3. Have there been included in this statement proper reserves to cover liabilities which may have been actually incurred on or before December 31, but of which no notice was received at the home office until subsequently? Answer: Yes

3½. In all cases where the company has assumed accident and health risks from another company, there should be charged in this statement on account of such reinsurances a reserve equal to that which the original company would have been required to charge had it retained the risks. Has this been done? Answer: Yes

4. Is the business of the company conducted upon the mutual, mixed or strictly proprietary plan? Answer: Proprietary

5. What dividends and what proportion of the profits of the company may be paid to the stockholders? Answer: All except dividends on small volume of paid up Participating Business.

6. State total amount of advances to surplus not repaid (Mutual Companies only) $ None

7. Is the unassigned surplus, per item 29, page 3 of this statement, held for the stockholders or the policyholders? Answer: Stockholders

8. If any part of such unassigned surplus is held for the stockholders, what was the amount thereof on Dec. 31 of current year? Answer: All

8A. Total amount paid in by stockholders since organization of the company as surplus funds (Stock Companies only), $ 300,000.00

9. Total dividends paid stockholders since organization of the company, cash, $ 6,250,000.00 ; stock, $ 700,000.00

10. What interest, direct or indirect, has this company in the capital stock of any other insurance company? Answer: None

10A. Are personnel or facilities of this company used by another company or companies or are personnel or facilities of another company or companies used by this company (except for activities such as administration of jointly underwritten group contracts and joint mortality or morbidity studies)? Answer: Yes Net reimbursement of such expenses between companies; paid $ -0-, received $ Expenses allocated directly by Company.

11. Is the company directly or indirectly owned or controlled by any other company, corporation, group of companies, partnership or individual? Answer: See below If so, give full particulars 66.803% of stock owned by Mutual of Omaha Insurance Company

12. **CAPITAL STOCK OF THIS COMPANY**

Class	No. Shares Outstanding	Par Value Per Share	Redemption Price if Stock Is Callable	Is Dividend Rate Limited?	Are Dividends Cumulative?
Preferred	None	$ None	$ None	None	None
Common	100,000	$ 10.00	* * * * *	* * * * *	* * * * *

12A. If company has outstanding bonds, debentures, guaranty capital notes, etc., furnish pertinent information concerning redemption price, interest features, etc. Answer: None

13. Does the company own any securities of a real estate holding company or otherwise hold real estate indirectly? Answer: No If so, explain

Name of real estate holding company

No. of parcels involved -0- Total book value $ -0-

14. Did any person while an officer, director or trustee of the company receive directly or indirectly, during the period covered by this statement, any commission on the business transactions of the company? Answer: No

14A. Has the company an established procedure for disclosure to its board of directors or trustees of any material interest or affiliation on the part of any of its officers, directors, trustees, or responsible employees which is in or is likely to conflict with the official duties of such person? Answer: Yes

15. Amount of compensation, if any, received during the year by any representative, officer, trustee or director of the company for services rendered as a member of any bondholders' or stockholders' reorganization or protective committee with which the company has deposited any securities. Answer: $ None

16. Amount of such compensation retained by the representative. Answer: $ None

16½. Does the company have a retirement plan (a) for agents; (b) for staff employees? Answer: (a) General Agents ; (b) Yes
If so, in what items are the reserves included? Answer: (a) Page 3, line 1 ; (b) Page 3, line 1

17. Total amount loaned during the year to directors or other officers $ None , to stockholders not officers $ None : Total amount of loans outstanding at end of year to directors or other officers $ None , to stockholders not officers $ None (exclusive of policy loans).

18. Have the future loadings on the premiums, or any part thereof, been assigned or hypothecated in any way? If so, give full information. Answer: No

18A. Except as reported in General Interrogatory 16½, has the company any agreement with any person, other than contracts with its agents for the payment of commissions, whereby it agrees that for any service rendered or to be rendered he shall receive, directly or indirectly, any salary, compensation or emolument that will extend beyond a period of 12 months from the date of the agreement? Answer: No

19. What proportion of premiums on policies issued by the company may be taken in notes, or other form of lien, on the policies? Answer: None

20. Were all the stocks, bonds and other securities owned December 31 of current year, in the actual possession of the company on said date, except as shown by the Schedules of Special and Other Deposits? Answer: Yes
If not, give full and complete information relating thereto

21. Were any of the stocks, bonds or other assets of the company loaned during the year covered by this statement? Answer: No
If so, give full and complete information relating thereto

22. State as of what date the latest examination of the company was made or is being made, and by what department or departments. Answer: December 31, 1961
Iowa, Massachusetts, Mississippi, Nebraska, Ohio and Washington

23. Has any change been made during the year of this statement in the charter, articles of incorporation, or deed of settlement of the company? Answer: No
If not previously filed, furnish herewith a certified copy of the instrument as amended.

(Only United States Branches of foreign companies need answer Interrogatories 24.)

24. What changes have been made during the year in the United States Manager or the United States Trustees of the company? Answer:

Does this statement contain all business transacted for the company through its United States Branch on risks wherever located? Answer:

25. What officials and heads of departments of the company supervised the making of this report? Answer: Vice President, Actuary, Treasurer, Ass't. Vice Presidnets & Auditors

26. In what states, territories, or foreign countries is the company authorized to transact business? Answer:
District of Columbia, Canada, Republic of Panama, Canal Zone, Puerto Rico, Guam, Virgin Islands, and all states except New York.

27. Is the purchase or sale of all investments of the company passed upon either by the Board of Directors or a subordinate committee thereof? Answer: Yes

28. Does the company keep a complete permanent record of the proceedings of its Board of Directors and all subordinate committees thereof? Answer: Yes

29. Have the instructions accompanying the blank furnished by this department been followed in every detail? Answer: Yes

30. Does this company have Separate Accounts? Answer: Yes . If so, has Separate Account Statement been filed with this Department? Answer: Yes . State the authority under which Separate Accounts are maintained. Answer: Nebraska Statutes 44-310.06-.08

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Note.—In case the following schedules do not afford sufficient space, companies may furnish them on separate forms, provided the same are upon paper of like size and arrangements and contain the information asked for herein and have the name of the company printed or stamped at the top thereof.

The figures on this page do not include Separate Account items, if any.

SPECIAL DEPOSIT SCHEDULE

Showing all deposits or investments NOT held for the protection of ALL the policyholders of the Company

(1) WHERE DEPOSITED	(2) DESCRIPTION OF DEPOSIT (INDICATING LITERAL FORM OF REGISTRATION OF SECURITIES)			(3) PAR VALUE	(4) Amortized VALUE
The Travelers Insurance Company, Hartford, Connecticut	United States Treasury Bonds, Registered	4%	1980	1,500,000.00	1,487,355.83
The Travelers Insurance Company, Hartford, Connecticut	United States Treasury Bonds, Registered	3-1/2%	1998	3,100,000.00	3,077,254.16
Georgia	United States Treasury Bonds, Registered	3-1/2%	1990	10,000.00	9,904.62
Iowa	United States Treasury Bonds, Registered	4%	1980	4,000,000.00	3,966,422.47
Companion Life Insurance Company, New York, New York	United States Treasury Bonds, Registered	3-1/2%	1998	100,000.00	100,000.00
First National City Bank, New York, New York	United States Treasury Bonds, Registered	3-1/2%	1998	100,000.00	100,000.00
South Carolina	United States Treasury Bonds, Registered	4%	1980	25,000.00	24,789.26
Virginia	United States Treasury Bonds	4%	1980	50,000.00	49,578.53
Canal Zone	United States Treasury Bonds, Registered	3-1/2%	1998	10,000.00	9,899.43
Canada	Government of Canada Bonds	5-1/2%	1975	300,000.00	306,581.02
Canada	Government of Canada Bonds	5-1/2%	1976	210,000.00	219,087.32
Canada	Government of Canada Bonds	5-1/2%	1980	750,000.00	735,669.45
Canada	Government of Canada Bonds	4-1/2%	1983	350,000.00	343,995.53
Canada	Government of Canada Bonds	3-3/4%	1998	250,000.00	243,117.30
Canada	Canadian National Railway Company Bonds	5-3/4%	1985	100,000.00	98,620.66
Canada	Canadian National Railway Company Bonds	5%	1987	100,000.00	95,280.15
Canada	Province of Manitoba Debentures	3-1/2%	1978	150,000.00	141,904.68
Canada	Province of Ontario Debentures	3%	1965	50,000.00	49,687.31
Canada	Province of Ontario Debentures	3%	1970	50,000.00	48,465.07
Canada	Hydro-Electric Power Commission of Ontario Debentures	4%	1976	200,000.00	200,000.00
Canada	Province of Quebec Debentures	3%	1965	50,000.00	49,675.76
Canada	Vancouver, British Columbia Debentures	5%	1969	25,000.00	24,135.77
Canada	Vancouver, British Columbia Debentures	5%	1970	25,000.00	24,042.83
Canada	Winnipeg, Manitoba Debentures	3-3/4%	1966/75	145,000.00	142,653.29
Canada	Winnipeg, Manitoba Debentures	5-1/2%	1972/86	300,000.00	300,000.00
Canada	Hamilton, Ontario Debentures	4%	1966/75	75,000.00	75,000.00
Canada	Metropolitan Toronto, Ontario Debentures	3-3/4%	1975	200,000.00	198,629.90
Canada	Metropolitan Toronto, Ontario Debentures	4-1/2%	1976	100,000.00	99,273.68
Canada	Ottawa, Ontario Debentures	5%	1964/72	180,000.00	178,457.81
Canada	Ottawa, Ontario Debentures	5-1/2%	1972/75	100,000.00	99,213.16
Canada	Regina, Saskatchewan Debentures	3-3/4%	1971/84	200,000.00	195,508.10
Panama	Banco Nacional De Panama (Cash)			200,000.00	200,000.00
			Totals	13,005,000.00	12,894,203.09

SCHEDULE OF ALL OTHER DEPOSITS

Showing all deposits made with any Government, Province, State, District, County, Municipality, Corporation, firm or individual, except the regular deposits in Banks and Trust Companies subject to check, and those shown in "Special Deposit Schedule" above.

WHERE DEPOSITED	DESCRIPTION OF DEPOSIT (INDICATING LITERAL FORM OF REGISTRATION OF SECURITIES)			PAR VALUE	Amortized VALUE
Nebraska	United States Treasury Bonds	4%	1980	100,000.00	99,157.05
Nebraska	United States Treasury Bonds, Investment Series B-1975-80, Registered	2-3/4%	1980	200,000.00	202,830.47
Nebraska	Commonwealth of Puerto Rico Bonds	2-1/2%	1974	25,000.00	24,427.80
Nebraska	Commonwealth of Puerto Rico Bonds	2-3/4%	1974	15,000.00	14,730.82
Fidelity and Deposit Company, Baltimore, Maryland	United States Treasury Bonds	3%	1995	30,000.00	30,000.00
	New York City School Construction Bonds	4-1/4%	1965	10,000.00	10,083.28
	New York City Corporate Stock Rapid Transit Bonds	4-1/4%	1978	15,000.00	16,113.31
			Totals	395,000.00	397,342.73

*Use market or amortized value according to basis used in this statement.

SCHEDULES A - B - BA - C - D - E BOUND SEPARATELY

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY

SCHEDULE F

Showing all claims for death losses and all other policy Claims resisted or compromised during the year, and all claims for death losses and all other policy claims resisted December 31 of current year

(1) Policy Numbers	(2) State of Residence of Claimant	(3) Amount Claimed	(4) Amount Paid During the Year	(5) Amount Resisted Dec. 31 of Current Year	(6) WHY COMPROMISED OR RESISTED
AG133-7873	Arkansas	5,000.00	Prems. Ret'd.		Misrepresentation
1,938,403	California	2,000.00	Prems. Ret'd.		Misrepresentation
1,821,288	Georgia	3,000.00	Prems. Ret'd.		Misrepresentation
1,955,077	Illinois	2,000.00	Prems. Ret'd.		Misrepresentation
1,957,616	Indiana	1,000.00	Prems. Ret'd.		Misrepresentation
1,947,275	Iowa	2,000.00	Prems. Ret'd.		Misrepresentation
1,915,081	Kansas	2,000.00	3,217.20		Settlement in favor of plaintiff
1,907,871	Maryland	3,000.00	540.53		Misrepresentation - Compromise
I-190684	Michigan	30,000.00	18,000.00		Policy not in force
1,812,560	Montana	6,000.00	-0-		Dismissed with prejudice
1,906,675	New Jersey	2,000.00	Prems. Ret'd.		Misrepresentation
1,957,936	New Jersey	1,178.00	Prems. Ret'd.		Misrepresentation
1,961,166	New Jersey	2,000.00	Prems. Ret'd.		Misrepresentation
1,903,386	New Mexico	1,150.00	Prems. Ret'd.		Misrepresentation
GLUG989, Cert. 244	Ohio	10,000.00	2,000.00		Did not qualify for coverage - compromise
AG122-8114	Ohio	10,000.00	10,000.00		Settlement in favor of plaintiff
AG113-10800	Pennsylvania	2,500.00	Prems. Ret'd.		Misrepresentation
1,893,927	Pennsylvania	1,918.00	Prems. Ret'd.		Misrepresentation
1,902,325	Pennsylvania	2,000.00	Prems. Ret'd.		Misrepresentation
1,915,208	Pennsylvania	5,000.00	Prems. Ret'd.		Misrepresentation
1,939,794	Pennsylvania	3,250.00	Prems. Ret'd.		Misrepresentation
1,979,244	Pennsylvania	1,000.00	-0-		Misrepresentation
1,948,685	Texas	2,000.00	1,250.00		Misrepresentation - Compromise
AG131-7219	Virginia	15,000.00	7,500.00		Misrepresentation - Compromise
1,975,682	Washington	1,000.00	Prems. Ret'd.		Misrepresentation
1,955,655	Wisconsin	1,098.00	Prems. Ret'd.		Misrepresentation
	Sub-Total Death Claims		42,507.73		
739147	South Carolina	1,948.20	19,000.00		Policyholder not disabled - compromise - policy surrendered
	Sub-Total Disability Claims		19,000.00		
307520	Arizona	4,387.20	-0-		Judgement in favor of U.B.L.I.C.
307521	Arizona	4,387.20	-0-		Judgement in favor of U.B.L.I.C.
	Sub-Total Miscellaneous Claims		-0-		
1,934,241	Alabama	10,000.00		10,000.00	Misrepresentation
1,912,155	California	10,000.00		10,000.00	Misrepresentation
1,644,114	California	10,000.00		10,000.00	Misrepresentation
GLUG1124, C-6359	California	20,000.00		20,000.00	Policy not in force
1,869,207	Illinois	1,000.00		1,000.00	Rescission - prior health
GLG-2968	Illinois	4,000.00		4,000.00	Not eligible for coverage
GLUG-1656	Illinois	10,000.00		10,000.00	Not eligible for coverage
I-211874	Kansas	10,000.00		10,000.00	Policy not issued
1,905,660	Louisiana	6,000.00		6,000.00	Policy not in force
1,695,020	Maryland	5,000.00		5,000.00	Policy not in force
GLS2818, C-11	Maryland	20,000.00		20,000.00	Not eligible for coverage
1,563,861	Massachusetts	1,000.00		1,000.00	Policy not in force
519907	Missouri	2,500.00		2,500.00	Misrepresentation
GLG-2763	Missouri	5,000.00		5,000.00	Not eligible for coverage
1,927,059	Pennsylvania	3,790.00		3,790.00	Misrepresentation
1,011,546	Washington	4,500.00		4,500.00	Paid to estate - former wife claiming proceeds
GLG-803	Washington	1,500.00		1,500.00	Policy not in force
	Sub-Total Death Claims			124,290.00	
Totals		252,106.60	61,507.73	124,290.00	

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*Claims under Accident and Health policies need not be reported in this schedule. All other claims should be classified and reported in the following sub-divisions:
(a) Claims disposed of during current year. (b) Claims resisted. In each of the above sections, Death claims, Additional Accidental Death Benefit Claims, Disability Benefit claims, Matured Endowment claims and Annuities with Life Contingencies claims, should be listed separately with sub-totals for each group.

THE INFORMATION ON THIS PAGE PERTAINS TO THE ENTIRE COMPANY BUSINESS, INCLUDING SEPARATE ACCOUNT BUSINESS, IF ANY.

SCHEDULE G

Showing (1) all payments in excess of $1,000 to each Trade Association, Service Organization, Statistical, Actuarial or Rating Bureau or Organization during the year; and (2) all salaries, compensation and emoluments, excepting bonafide commissions paid to or retained by agents, received in the current year by: (a) each director or trustee regardless of the amount thereof, (b) each of the ten officers or employees receiving the largest amounts, and (c) any other person, firm or corporation if the amount received was in excess of $20,000, except for amounts included in Schedules I, J and K. (Any other amounts to be shown where required by statute.)

LIST ITEMS UNDER (1) AND (2) IN SEPARATE GROUPINGS

(1) TITLE	(2) NAME OF PAYEE	(3) LOCATION OF PAYEE	(4) AMOUNT PAID Dollars	Cents	(5) DATE	(6) BY WHOM AUTHORIZED
		SERVICE ORGANIZATIONS, ETC.				
	American Life Convention	Chicago, Illinois	10,975	.63	1963	C. W. Bucknam
	Cooperative Fund for Underwriter Education	Bryn Mawr, Pennsylvania	1,286	.63	1963	R. J. Taylor
	Institute of Life Insurance	New York, New York	17,008	.00	1963	C. W. Bucknam
	Life Insurance Agency Management Association	Hartford, Connecticut	5,154	.00	1963	R. J. Taylor
	Life Insurance Association of America	New York, New York	9,554	.60	1963	C. W. Bucknam
	Life Insurance Medical Research Fund	New York, New York	6,622	.00	1963	C. W. Bucknam
	Life Office Management Association	New York, New York	1,075	.00	1963	N. M. Longworth
	National Fund for Medical Education	New York, New York	4,244	.00	1963	C. W. Bucknam
		SALARIES OFFICES, DIRECTORS, ETC.				

The figures on this page do not include Separate Account items, if any.

SCHEDULE H

Accident and Health Exhibit

• GROSS PREMIUMS (Less Return Premiums)	(1) TOTAL		(2) GROUP ACCIDENT AND HEALTH		INDIVIDUAL POLICIES							
					(3) ACCIDENT ONLY		(4) ACCIDENT AND HEALTH		(5) NON-CANCELLABLE ACCIDENT AND HEALTH		(6) HOSPITAL AND MEDICAL EXPENSE	
	AMOUNT	† %	AMOUNT	† %	AMOUNT	† %	AMOUNT	† %	AMOUNT	† %	AMOUNT	† %
1. Direct Premiums Received	36,059,691.89		27,939,040.29		3,708.95		4,211,067.12		256,277.07		3,849,598.46	
2. Reinsurance Assumed	6,326,010.91		6,326,010.91		-0-		-0-		-0-		-0-	
3. Reinsurance Ceded	37,062,753.05		34,265,051.20		149.75		1,179,085.43		200,956.92		1,417,509.75	
4. Net Premiums Received	5,322,949.75		-0-		3,559.20		3,031,981.69		55,320.15		2,232,088.71	
5. Premiums Due and Unpaid Dec. 31, current year	-0-		-0-		-0-		-0-		-0-		-0-	
6. Premiums Due and Unpaid Dec. 31, previous year	-0-		-0-		-0-		-0-		-0-		-0-	
7. Premiums Written or Renewed during year	5,322,949.75		-0-		3,559.20		3,031,981.69		55,320.15		2,232,088.71	
8. Premiums Paid in Adv. Dec. 31, previous year	120,166.19		-0-		100.00		48,365.02		1,249.65		70,451.52	
9. Premiums Paid in Adv. Dec. 31, current year	118,362.22		-0-		125.00		46,308.24		1,059.73		70,869.25	
10. Premiums of current year (7+8-9)	5,324,753.72		-0-		3,534.20		3,034,038.47		55,510.07		2,231,670.98	
11. ††Unearned Premiums and Additional Reserves Dec. 31, previous year	1,712,868.37		-0-		1,496.95		830,936.30		54,707.60		825,727.52	
12. ††Unearned Premiums and Additional Reserves Dec. 31, current year	1,562,486.82		-0-		1,357.20		771,557.88		49,330.15		740,241.59	
13. Premiums Earned during current year	5,475,135.27		-0-		3,673.95		3,093,416.89		60,887.52		2,317,156.91	
LOSSES												
14. Direct Losses Paid	29,818,340.37		24,293,799.29		300.00		2,984,589.55		105,398.54		3,534,252.99	
15. Losses on Reinsurance Assumed	5,690,214.25		5,690,214.25		-0-		-0-		-0-		-0-	
16. Recoveries on Reinsurance Ceded	31,654,583.61		29,840,013.54		300.00		661,059.57		60,203.15		949,007.35	
17. Losses Paid	3,853,971.01		-0-		-0-		2,223,529.98		45,195.39		1,585,245.64	
18. Reinsurance Recoverable, Dec. 31, current year	-0-		-0-		-0-		-0-		-0-		-0-	
19. Unpaid Losses, Dec. 31, current year	1,366,674.03		-0-		2,095.39		890,007.54		21,839.31		452,731.79	
20. Reinsurance Recoverable, Dec. 31, previous year	-0-		-0-		-0-		-0-		-0-		-0-	
21. Unpaid Losses, Dec. 31, previous year	1,463,347.00		-0-		2,698.11		930,349.79		32,414.55		497,884.55	
22. Losses of current year	3,757,298.04		-0-		- 602.72		2,183,187.73		34,620.15		1,540,092.88	
23. ††Reserve for Amounts not yet due on Claims and for future Contingent Benefits, Dec. 31, current year	4,223,150.34		-0-		-0-		3,856,786.83		13,165.20		359,898.31	
24. ††Reserve for Amounts not yet due on Claims and for future Contingent Benefits, Dec. 31, previous year	4,295,734.68		-0-		-0-		3,910,304.50		11,641.35		373,788.83	
25. LOSSES INCURRED DURING CURRENT YEAR	3,684,713.70	67.3	-0-		- 602.72	16.4	2,129,670.06	68.9	36,444.00	***	1,519,202.36	65.6
EXPENSES INCURRED												
26. Allocated Claim Expenses	35,073.53	.6	-0-		.36	-0-	16,689.55	.5	333.90	.5	18,049.72	.8
27. Unallocated Claim Expenses	205,493.76	3.8	-0-		14.29	.4	99,780.33	3.2	1,971.40	3.2	103,727.74	4.4
28. **Commissions: a. Direct	1,797,499.32	32.8	741,217.08		414.95		585,684.38	18.9	27,484.46	45.1	442,698.45	19.1
b. Reinsurance Assumed	596.84		596.84		-0-		-0-		-0-		-0-	
c. Reinsurance Ceded	1,212,972.67	22.2	741,813.92		4.71		271,335.61	8.8	21,729.94	35.7	178,088.59	7.7
d. Net Commissions	585,123.49	10.7	-0-		410.24	11.1	314,348.77	10.2	5,754.52	9.5	264,609.86	11.4
29. Acquisition and Field Supervision Expenses (other than commissions)	2,705.23	.1	-0-		2.71	.1	1,280.11		17.85		1,404.56	.1
30. General Administration Expenses	307,503.67	5.6	-0-		307.50	8.4	145,510.74	4.7	2,029.59	3.3	159,655.91	6.9
31. Inspection and Bureau Expenses	34.94		-0-		.04		16.53		.23		18.14	
32. Taxes, Licenses and Fees (excluding Federal Income, Excess Profits and Real Estate Taxes)	127,727.50	2.3	-0-		87.43	2.4	72,562.27	2.4	1,326.39	2.2	53,751.41	2.3
33. TOTAL EXPENSES INCURRED	1,263,662.12	23.1	-0-		822.57	22.4	650,188.30	21.0	11,433.21	18.8	601,217.34	25.9
34. GAIN FROM UNDERWRITING (13-25-33)	526,759.45	9.6			3,454.10	94.0	313,558.53	10.1	13,009.61	21.4	196,737.21	8.5
35. DIVIDENDS TO POLICYHOLDERS	-0-		-0-		-0-		-0-		-0-		-0-	
EXHIBIT OF PREMIUMS*												
36. In Force, Dec. 31, previous year	8,045,918.96		2,640,409.00		3,769.22		2,269,462.40		119,854.76		3,012,423.58	
37. Premiums Paid in advance, Dec. 31, previous year	176,143.87		10,022.17		100.00		59,842.60		2,106.68		104,072.42	
38. Written or Renewed during year	43,272,051.16		35,151,399.56		3,708.95		4,211,067.12		256,277.07		3,849,598.46	
39. Excess of Original Premiums over Reinsurance Assumed	-0-		-0-		-0-		-0-		-0-		-0-	
40. Expirations and Excess of Original Premiums over Return Premiums on Cancellations	42,877,206.60		34,371,270.59		4,015.20		4,355,873.77		266,438.20		3,879,608.84	
41. Premiums Paid in advance, Dec. 31, current year	179,693.66		8,691.14		135.00		61,348.59		1,707.83		107,811.10	
42. In Force at end of year	8,437,213.73		3,421,869.00		3,427.97		2,123,149.76		110,092.42		2,778,674.58	
43. Deduct Reinsurance Premiums in Force	5,096,974.55		3,421,869.00		165.22		424,998.82		76,955.08		1,179,986.43	
44. Net Premiums in Force:												
a. on policies running one year or less	3,340,239.18		-0-		3,262.75		1,698,150.94		33,137.34		1,605,688.15	
b. on policies running more than one year	-0-		-0-		-0-		-0-		-0-		-0-	
c. Total	3,340,239.18		-0-		3,262.75		1,698,150.94		33,137.34		1,605,688.15	
45. Unearned Premium Reserve:												
a. on policies running one year or less	1,527,334.57		-0-		1,357.20		771,557.88		14,177.90		740,241.59	
b. on policies running more than one year	-0-		-0-		-0-		-0-		-0-		-0-	
c. reserve for rate credits, etc.	35,152.25		-0-		-0-		-0-		35,152.25		-0-	
d. Total	1,562,486.82		-0-		1,357.20		771,557.88		49,330.15		740,241.59	
REINSURANCE												
46. Assumed—amount included in line 5	1,034,905.01		1,034,905.01		-0-		-0-		-0-		-0-	
47. Assumed—amount included in line 9	-0-		-0-		-0-		-0-		-0-		-0-	
48. Ceded—amount deducted from line 5	4,211,451.01		4,211,451.01		-0-		-0-		-0-		-0-	
49. Ceded—amount deducted from line 9	61,331.44		8,691.14		10.00		15,040.35		688.10		36,941.85	
50. Ceded—amount deducted from line 12:												
a. Applicable to line 1 of Exhibit 9, Part 1	1,009,282.98		220,194.00		99.87		177,265.26		37,752.43		573,971.42	
b. Applicable to line 2 of Exhibit 9, Part 1	527,672.75		-0-		-0-		320,408.29		207,264.46		-0-	
c. Applicable to line 4 of Exhibit 9, Part 1	569,472.94		569,472.94		-0-		-0-		-0-		-0-	
51. Ceded—amount deducted from line 23:												
a. Applicable to line 3 of Exhibit 9, Part 1	749,863.71		106,669.44		-0-		466,910.00		40,503.35		135,780.92	
b. Applicable to line 4 of Exhibit 9, Part 1	945,619.60		945,619.60		-0-		-0-		-0-		-0-	

*Initial Premiums Written and Unpaid ("Unplaced Premiums") at Dec. 31 are excluded from these items.

**Including $ None reported as "Policy, membership and other fees retained by agents."

†Enter, only for items 25 to 35 inclusive, in each of the six columns of the exhibit the percentages of the amounts of the same items to the premiums earned entered in the corresponding columns at item 13.

††Include reserve for deferred maternity benefits under Gross Premiums or Losses. State which: Losses

***Supplemental loss ratio for Individual Non-cancellable Accident and Health only: $\frac{\text{Lines } 25 - 11 + 12}{\text{Line } 10}$ = 55.97 %

THE INFORMATION ON THIS PAGE PERTAINS TO THE ENTIRE COMPANY BUSINESS, INCLUDING SEPARATE ACCOUNT BUSINESS, IF ANY.

SCHEDULE I

Showing all commissions and collection fees paid in connection with loans or properties during the year where the same amounted to more than $5,000 to any person, firm or corporation

(1) DATE	(2) PAYEE NAME	(2) PAYEE ADDRESS	(3) WHAT ACQUIRED OR DISPOSED OF DESCRIPTION	(3) AMOUNT INVOLVED	(4) AMOUNT OF COMMISSION PAID
	Advance Mortgage Corporation	Chicago, Illinois	Service fees on Mortgage Loans		19,844.10
	H. F. Philipsborn & Co.	Chicago, Illinois	Service fees on Mortgage Loans		8,612.34
	Charles F. Curry and Company	Kansas City, Missouri	Service fees on Mortgage Loans		12,868.87
	Geo. C. Jones Co.	Minneapolis, Minnesota	Service fees on Mortgage Loans		16,915.75
	The Kansas City Mortgage Company	Kansas City, Missouri	Service fees on Mortgage Loans		16,811.19
	McElvain Mortgage Co.	Chicago, Illinois	Service fees on Mortgage Loans		9,499.13
	Van Schaack & Company	Denver, Colorado	Service fees on Mortgage Loans		8,201.19
	H. A. Wolf Company, Inc.	Omaha, Nebraska	Service fees on Mortgage Loans		6,338.70
	Conservative Investment Company	Omaha, Nebraska	Service fees on Mortgage Loans		13,241.81
	Western Securities Company	Omaha, Nebraska	Service fees on Mortgage Loans		16,675.82
	Janisse Mortgage Company	Detroit, Michigan	Service fees on Mortgage Loans		19,475.22
	Schumacher Mortgage Company, Inc.	Memphis, Tennessee	Service fees on Mortgage Loans		6,970.92
	Cecil E. Gaulding, Jr.	Dallas, Texas	Service fees on Mortgage Loans		10,268.85
	Investors, Inc.	Lubbock, Texas	Service fees on Mortgage Loans		5,563.59
	Hodell & Co.	Houston, Texas	Service fees on Mortgage Loans		24,233.16
	The Kirk-Mac Mortgage Company	Fort Worth, Texas	Service fees on Mortgage Loans		8,259.72
	Sandlin Mortgage Corporation	Austin, Texas	Service fees on Mortgage Loans		17,156.25
	Harry S. Surkamp Investment Co.	St. Louis, Missouri	Service fees on Mortgage Loans		13,649.46
	Oklahoma Mortgage Company, Inc.	Oklahoma City, Oklahoma	Service fees on Mortgage Loans		28,437.65
	C. A. Larson Investment Company	Beverly Hills, California	Service fees on Mortgage Loans		37,013.60
	Provident Mortgage Corporation	Pasadena, California	Service fees on Mortgage Loans		35,062.68
	W. A. McKinley Company	Dallas, Texas	Service fees on Mortgage Loans		7,231.49
	Pacific States Mortgage Service, Inc.	Oakland, California	Service fees on Mortgage Loans		61,446.68
	Honolulu Mortgage Co., Ltd.	Honolulu, Hawaii	Service fees on Mortgage Loans		12,803.35
	O'Malley-Pickrell Mortgage Co.	Phoenix, Arizona	Service fees on Mortgage Loans		13,143.09
	Tucker & Branham, Inc.	Orlando, Florida	Service fees on Mortgage Loans		5,496.74
	J. C. Nichols Company	Kansas City, Missouri	Service fees on Mortgage Loans		5,183.09
	Western Mortgage Loan Corporation	Ogden, Utah	Service fees on Mortgage Loans		5,325.19
	Securities Mortgage Company	Seattle, Washington	Service fees on Mortgage Loans		12,695.69

SCHEDULE J

Showing in detail all legal expenses paid during the year (List individually all items of $500 or more)

(1) PAYEE NAME	(2) PAYEE ADDRESS	(3) AMOUNT PAID	(4) OCCASION OF EXPENSE
Arter Hadden Wykoff & Vanduzer	Cleveland, Ohio	1,065.75	Claims
Blank Rudenko Klaus & Rome	Philadelphia, Pennsylvania	13,845.16	Flexible Fund Annuity
Bleakley Platt Schmidt Hart & Fritz	New York, New York	3,755.39	Claims
Butler Chapman & Barnes	Spartanburg, South Carolina	519.52	Claims
Goodell Casey Briman Hardesty	Topeka, Kansas	1,987.00	Claims
Gross Welch Vinardi Kauffman & Schatz	Omaha, Nebraska	24,525.00	General Legal - Corporate Matters & Retainer
Arthur M. Hoffeins	Detroit, Michigan	4,534.52	Claims
Icaza Gonzalez Ruiz & Aleman	Panama City, Republic of Panama	1,572.35	General Legal - Corporate Matters
Kelly Keating & Leahy	Washington, D.C.	785.35	Claims
McCormick Lusk & Paine	Carlsbad, New Mexico	854.20	Legislative Service
Minnesota Mutual Life Insurance Company	St. Paul, Minnesota	3,203.00	Tax Matters
Sherman & Sterling	New York, New York	9,765.08	General Legal - Corporate Matters
Snell & Wilmer	Phoenix, Arizona	1,540.00	Policy Provisions
Sutherland Asbill & Brennan	Washington, D.C.	7,206.77	General Legal - Corporate Matters
Thomas Busse Weiss Cullen & Godfrey	St. Louis, Missouri	607.50	Claims
Williams, Cocke, Worrell & Kelly	Norfolk, Virginia	2,565.21	Claims
Jerry N. Griffin	Washington, D.C.	4,500.00	Retainer Fee
Walter B. Gibbons	Philadelphia, Pennsylvania	820.50	Claims
J. Edward Maley	Los Angeles, California	2,782.77	Claims
Heidelberg Sutherland & McKenzie	Hattiesburg, Mississippi	797.08	Claims
Saperston McNaughtan & Saperston	Buffalo, New York	1,264.02	Claims
Stein & Winters	Pittsburg, Pennsylvania	575.00	Claims
Watkins & Eager	Jackson, Mississippi	2,078.85	Claims
Watters & Donovan	New York, New York	622.93	Claims
Life Insurance Association of America	New York, New York	234.86	Various
Reimbursement by Mutual of Omaha Insurance Company under reinsurance agreement		-3,164.30	
	Total of all other items	4,467.33	
	Grand Total	93,450.34	

THE INFORMATION ON THIS PAGE PERTAINS TO THE ENTIRE COMPANY BUSINESS, INCLUDING SEPARATE ACCOUNT BUSINESS, IF ANY.

SCHEDULE K

Showing all expenditures in connection with matters before legislative bodies, officers or departments of government during the Year
(Items of less than $500 may be grouped unless prohibited by statute)

(1) DATE	PAYEE (2) NAME	PAYEE (3) ADDRESS	(4) AMOUNT PAID	(5) MEASURE OR PROCEEDING	INTEREST OF THE COMPANY THEREIN
1963	Life Insurance Association of America, 488 Madison Ave., New York . . . . . Prorated share of expenses of telephone & telegraph messages, meetings, legislative information service, traveling expenses of officers of Association, disbursements of agent of Association, Attorneys' fees and disbursements, salaries, and other general expenses.		$ 2,932.35	All pending and prospective legislation; rulings and questions before insurance departments; hearings and opinions by Attorneys General; and conferences and correspondence with Federal and State officials.	Effect upon the interests of policyholders and upon companies generally.
6-26-1963	McCormick, Lusk & Paine, Carlsbad, New Mexico		854.20	New Mexico Senate Bill #280	Taxation
		Total of all other items	-0-		
		Grand Total	$3,786.55		

SCHEDULE L

Proceedings at last annual election held on February 16, 1963

NAMES OF CANDIDATES FOR DIRECTOR OR TRUSTEE	NUMBER OF VOTES CAST FOR EACH CANDIDATE: IN PERSON	BY PROXY	BY MAIL	TOTAL VOTES
Totals				

NOTE:—Attach to this schedule a copy of the official minutes of annual meeting.

Form 1

ANNUAL STATEMENT FOR THE YEAR 1963 OF THE UNITED BENEFIT LIFE INSURANCE COMPANY

Write or Stamp Name

SCHEDULE M

Age

Showing rates of annual dividends declared (paid) in current Year and annual premiums per **$1,000** *of insurance at age , at date of issue*

THE FIGURES ON THIS PAGE DO NOT IN-CLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

YEARS IN WHICH THE POLICIES WERE ISSUED

KIND OF POLICY	1962		1961		1960		1959		1958		1953		1948		1943		1938		1933		1928		1923		1918		1913		1908		1903		1898		1893		1888	
	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd	Prem.	Div'd

AGES 25 - 35 - 45 - 55 NONE

NOTE:—ATTACH TO THIS SCHEDULE EXPLANATION SHOWING PRECISE METHODS BY WHICH DIVIDENDS WERE CALCULATED.

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

SCHEDULE O—Part 1

Accident and Health Losses

(1)	(2) Losses paid during the year less salvage and reinsurance received thereon during the year		(4) Losses unpaid Dec. 31 of current year, viz Estimated liability Dec. 31 of current year		(6) Total losses incurred to December 31 of current year on losses incurred in prior years (Columns 2 + 4)	(7) Estimated liability on unpaid losses Dec. 31 of previous year, per Columns 4 and 5 of last annual statement
	*On losses incurred prior to January 1 of current year	On losses incurred during the year	*On losses unpaid Dec. 31 of previous year, less reinsurance thereon	On losses incurred during the year, less reinsurance thereon		
Accident only	-0-	-0-	-0-	2,095.39	-0-	2,698.11
Accident and Health	1,168,606.02	1,054,923.96	3,595,287.88	1,151,506.49	4,763,893.90	4,340,654.29
Non-Cancellable Accident and Health	22,021.37	23,174.02	22,128.73	13,175.78	44,150.10	44,055.90
Hospital and Medical Expense	397,396.15	1,187,849.49	314,570.69	491,059.41	711,966.84	871,673.38
Group Accident and Health	-0-	-0-	-0-	-0-	-0-	-0-
TOTALS	1,588,023.54	2,265,947.47	3,931,987.30	1,657,837.07	5,520,010.84	5,759,081.68

*Including all losses reported in the current year where the loss was incurred prior thereto.

NOTE: No salvage or reinsurance received during year on claims paid prior to current year to be deducted from amounts reported in column (2). Amount of such salvage and reinsurance on claims paid prior to current year:

Accident only	$ -0-
Accident and Health	-0-
Non-Cancellable Accident and Health	-0-
Hospital and Medical Expense	-0-
Group Accident and Health	-0-

SCHEDULE O—Part 2

Development of Incurred Losses
Non-Cancellable Accident and Health Insurance

Sum of net amount paid policyholders for losses and reserve for losses outstanding at end of year

Years in Which Losses Were Incurred	RESERVE DATE					
	Dec. 31, 1959	Dec. 31, 1960	Dec. 31, 1961	Dec. 31, 1962	Dec. 31, 1963	
1959	40,797.54	48,029.02	50,659.91	X X X	X X X	
1960	X X X	47,350.24	49,263.71	48,706.82	X X X	
1961	X X X	X X X	30,639.48	41,636.76	51,790.52	
1962	X X X	X X X	X X X	38,375.98	38,025.84	
1963	X X X	X X X	X X X	X X X	36,349.80	

SCHEDULE S — Part 1

Showing Names and Locations of Companies and Amounts Recoverable on Paid and Unpaid Losses for all Reinsurance Ceded

NAME OF COMPANY	‡LOCATION	PAID LOSSES		UNPAID LOSSES	
		Dollars	Cts.	Dollars	Cts.
LIFE					
Lincoln National Life Insurance Company	Fort Wayne, Indiana	1,446.00		4,476.00	
Colonial General Life Insurance Company (assigned bank deposit as collateral)	Brookfield, Illinois	6,000.00		-0-	
	Totals—Life	7,446.00		4,476.00	
ACCIDENT AND HEALTH					
Mutual of Omaha Insurance Company		-0-		2,420,748.97	
	Totals—Accident and Health	-0-		2,420,748.97	
	Grand Totals—Life and Accident and Health	7,446.00		2,425,224.97	

SCHEDULE S — Part 2

Showing Accident and Health Reinsurance Premiums Ceded as of December 31, Current Year

NAME OF COMPANY	‡LOCATION	PREMIUMS IN FORCE	UNEARNED PREMIUMS (estimated)
Mutual of Omaha Insurance Company		5,096,974.55	1,009,282.98
	Totals	5,096,974.55	1,009,282.98

‡Show also domiciliary state or country.

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

SCHEDULE S—Part 3

Showing Data on Reinsurance Ceded for ALL Life Insurance and Related Benefits†

NAME OF COMPANY	‡LOCATION	*TYPE OF RE-INSURANCE CEDED	AMOUNT IN FORCE AT END OF YEAR	RESERVE CREDIT TAKEN	PREMIUMS
Amalgamated Labor Life Ins. Co.	Chicago, Illinois				
Group		YRT	6,932,000	-0-	29,554.80
American United Life Ins. Co.	Indianapolis, Indiana				
Life		YRT	5,390,421	41,366	56,041.10
TD		YRT		70,686	210.20
DI		YRT		1,518	3,016.47
Business Men's Assurance Co.	Kansas City, Missouri				
Life		YRT	2,858,434	20,916	40,869.51
TD		YRT		905	343.06
DI		YRT		13	25.00
Colonial General Life Ins. Co.	Brookfield, Illinois				
Group		YRT	11,974,000	-0-	-0-
Connecticut General Life Ins. Co.	Hartford, Connecticut				
Life		YRT	17,050,453	95,841	111,773.17
TD		YRT		1,004	722.65
DI		YRT		1,146	2,239.27
Lincoln National Life Ins. Co.	Fort Wayne, Indiana				
Life		CO	9,000	6,982)	
Life		YRT	7,181,115	78,624)	194,775.30
TD		YRT		20,915	12.24
DI		YRT		91	181.03
North American Reassurance Co.	New York, New York				
Life		YRT	8,259,990	68,145	89,666.23
TD		YRT		2,835	1,334.39
DI		YRT		2,110	4,419.61
Group		YRT	94,000	-0-	666.33
Republic National Life Ins. Co.	Dallas, Texas				
Life		YRT	187,994	911	1,274.74
	Totals		59,987,407 (To agree with Lines 20 and 39, Page 15)	444,008 (To agree with appropriate lines in Exh. 8)	537,125.10 (To agree with Line 26, Exh. 1)

†Do not include jointly underwritten group contracts.

‡Show also domiciliary state or country.

*Indicate type of reinsurance ceded by symbols: YRT (yearly renewable term); CO (co-insurance), OTH (other types). If more than one kind in the same company, show separate line for each kind.

NOTE: Companies actively engaged in the business of reinsuring the life and related business of other companies may show Totals only and file the details of the information required in this Part 3 on or before June 30th of the year following the statement date and such information will not be considered as part of the annual statement which is a public document.

GENERAL INTERROGATORIES

1. Has the company reported in this schedule the required data on all reinsurance ceded? Answer: Yes

2. Are any of the reinsurers listed in this schedule owned or controlled, either directly or indirectly, by the company, or by any representative, officer, trustee, or director of the company? Answer: No if so, give full particulars

3. Have any policies issued by the company been reinsured with a company chartered in a country other than the United States (excluding U. S. Branches of such companies) which is owned or controlled directly or indirectly by the insured, the beneficiary, a creditor of the insured, or any other person not primarily engaged in the insurance business? Answer: No

ANNUAL STATEMENT FOR THE YEAR 1963 OF THE INTER-STATE LIFE INSURANCE COMPANY

(Write or Stamp Name)

SCHEDULE X—Part 1—UNLISTED ASSETS

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

Showing all property owned by or in which the Company had any interest, on December 31 of current year, which is not entered on any other schedule and which is not included in the financial statement for the current year

DESCRIPTION	FROM WHOM ACQUIRED	DATE WHEN ACQUIRED	DATE WHEN CHARGED OFF FROM STATEMENT	PAR VALUE	ACTUAL COST	BOOK VALUE WHEN CHARGED OFF	MARKET VALUE DECEMBER 31 OF CURRENT YEAR	GROSS INCOME THEREFROM DURING YEAR	OUTLAYS MADE DURING YEAR	REASONS FOR NOT CARRYING PROPERTY ON BOOKS
Swedish Match Company, Class B, 120 shares	International Match Realization Corporation (Liquidated 1949)	1931-1935	1934-1935	0	10,575.00	10,575.00	4,320.00	0	0	Bankruptcy of International Match Company
Billings, Montana, Special Improvement District No. 227 - Bond No. 95	American Life Insurance Company, Denver, Colo.	1935	1941	500.00	500.00	500.00	0	0	0	Considered of no value
		Totals		500.00	11,075.00	11,075.00	4,320.00	0	0	

SCHEDULE X—Part 2

Showing all property acquired or transferred to Schedule X, Part 1, during the year except that shown in Schedules A, B, C and D and except furniture, fixtures and supplies

DESCRIPTION	DATE OF ACQUISITION	FROM WHOM ACQUIRED	PAR VALUE	ACTUAL COST
NONE				
Totals				

SCHEDULE X—Part 3

Showing all property sold or transferred from Schedule X, Part 1, during the year except that shown in Schedules A, B, C and D.

DESCRIPTION	DATE OF ACQUISITION	FROM WHOM ACQUIRED	PAR VALUE	ACTUAL COST	DATE OF SALE	TO WHOM SOLD	CONSIDERATION	GROSS INCOME THEREFROM DURING YEAR	OUTLAY THEREON DURING YEAR OTHER THAN COST
NONE									
Totals									

*Companies should limit entries in this schedule to items transferred from asset accounts. NOTE.—Interest, dividends and real estate income should be reported in Exhibit 3, Line 8; capital gains on investments should be reported in Exhibit 4, Line 9; any other receipts should be reported in Item 5 or 6, Page 4.

THE INFORMATION ON THIS PAGE PERTAINS TO THE ENTIRE COMPANY BUSINESS, INCLUDING SEPARATE ACCOUNT BUSINESS, IF ANY.

SCHEDULE T—PREMIUMS AND ANNUITY CONSIDERATIONS

Allocated by States and Territories

STATES, ETC. (1)	DIRECT BUSINESS ONLY		
	Life Insurance Premiums (2)	Annuity Considerations (3)	Accident and Health Insurance Premiums, Including Policy, Membership and Other Fees
Alabama	284,806.92	1,388.10	177,350.23
Alaska	239,729.36		177,196.91
Arizona	629,987.24	11,423.01	121,668.68
Arkansas	252,513.17	828.79	149,946.14
California	3,417,185.45	24,014.79	6,896,154.54
Colorado	511,207.88	3,466.11	487,369.85
Connecticut	704,771.82	55,524.42	142,893.37
Delaware	80,192.71	450.00	12,052.67
Dist. Columbia	1,395,227.02	7,625.04	96,825.12
Florida	950,413.13	16,875.30	253,808.93
Georgia	466,220.52	4,793.74	337,120.63
Hawaii	1,512,029.72	2,414.20	110,184.06
Idaho	391,722.06	2,261.01	154,276.06
Illinois	3,951,319.23	301,057.24	2,451,763.54
Indiana	1,146,775.72	4,973.50	999,120.19
Iowa	1,220,794.53	11,755.48	1,046,687.95
Kansas	778,514.88	26,551.43	180,608.76
Kentucky	449,861.53	24,564.48	310,221.66
Louisiana	597,654.43	1,638.23	300,475.86
Maine	374,155.35	16,253.60	72,405.42
Maryland	726,009.24	6,178.80	273,391.49
Massachusetts	917,919.92	4,460.80	228,427.03
Michigan	3,412,295.82	60,757.61	1,594,810.92
Minnesota	1,058,868.82	7,024.04	1,302,957.46
Mississippi	414,239.40	338.12	166,180.84
Missouri	1,033,471.25	4,385.02	679,088.12
Montana	406,771.48	1,291.42	401,714.45
Nebraska	1,830,396.27	1,813,059.61	2,312,327.30
Nevada	399,818.96	771.64	710,335.76
New Hampshire	310,692.69	7,894.16	157,851.03
New Jersey	1,138,275.54	11,482.40	1,428,835.97
New Mexico	266,913.45	2,252.86	35,107.67
New York	1,157,590.70	43,800.92	450,748.06
North Carolina	892,343.86	8,635.98	206,660.01
North Dakota	269,777.46	9,571.55	198,509.05
Ohio	2,866,897.51	56,537.68	1,357,322.71
Oklahoma	317,982.87	2,961.85	303,225.22
Oregon	920,364.82	45,781.84	885,253.12
Pennsylvania	5,353,612.05	346,798.90	1,214,011.96
Rhode Island	321,987.10	13,920.38	37,698.59
South Carolina	252,558.89	1,308.00	132,097.85
South Dakota	367,903.51	3,721.94	187,298.58
Tennessee	523,642.32	1,431.94	264,680.26
Texas	1,109,975.99	13,004.50	710,802.53
TOTALS (forward)	45,625,392.59	2,985,230.63	29,717,466.55

STATES, ETC. (1)	DIRECT BUSINESS ONLY		
	Life Insurance Premiums (2)	Annuity Considerations (3)	Accident and Health Insurance Premiums, Including Policy, Membership and Other Fees
TOTALS (forward)	45,625,392.59	2,985,230.63	29,717,466.55
Utah	308,458.27		66,858.45
Vermont	107,966.40	3,135.16	55,139.24
Virginia	774,320.82	16,533.13	357,790.02
Washington	1,021,128.93	3,318.02	3,111,856.99
West Virginia	375,791.94	2,041.55	597,353.07
Wisconsin	779,187.62	5,757.07	1,683,342.02
Wyoming	224,324.26	4,780.00	85,220.44
Canada	946,787.24	61,691.37	4,226.89
Cuba			
Puerto Rico	359,124.39	88.46	366,686.78
Philippine Is.			
Mexico			
Other foreign	816,186.55	2,573.25	7,453.05
Canal Zone	279,111.32	76.30	5,141.70
Guam	45,380.91		211.00
Panama	64,332.39		900.69
Virgin Islands	3,283.52		45.00
†Dividends applied to purchase paid-up additions and annuities	106.88		
†Dividends applied to shorten endowment or premium-paying period			
Premium or annuity Considerations waived under disability or other contract provisions	165,437.92	3,462.91	
Total (Direct Business)	51,896,321.95	3,088,687.85	36,059,691.89
Plus Reinsurance Assumed	2,990,446.55		6,326,010.91
Total (All Business)	54,886,768.50	3,088,687.85	42,385,702.80
Less Reinsurance Ceded	517,552.20		37,062,753.05
*TOTAL (All Business) less Reinsurance ceded	54,369,216.30	3,088,687.85	5,322,949.75

Explanation of basis of allocation by states, etc., of premiums and annuity considerations

Premiums and annuity considerations are allocated by the domicile of the policyholder.

†Dividends applied to pay renewal premiums and consideration for annuities must be included in columns (2) and (3) respectively and distributed by states.

*The sum of columns (2) and (3) should balance with Exhibit 1, Lines 6, 10 and 16, Col. 1, less Cols. 9 and 10, this statement, plus the corresponding items of the Separate Account Statement.

Column (4) should balance with Exhibit 1, Lines 6, 10 and 16, Cols. 9 and 10, or with Schedule H, Line 7; indicate which Exhibit 1

ANNUAL STATEMENT

OF THE

SEPARATE ACCOUNT BUSINESS

OF THE

UNITED BENEFIT
Life Insurance Company

of

OMAHA

in the

STATE OF NEBRASKA

TO THE

Insurance Department

OF THE

STATE OF

FOR THE YEAR ENDED
DECEMBER 31, 1963

1963

PLAINTIFF'S EXHIBIT NO. 8-B

United Benefit Life Insurance Company's Annual Statement, for the year ended December 31, 1963, has been signed by G. A. Ecklund, Vice President, on the line usually designated for the president.

N. M. Longworth, the former president, died November 8, 1963, and a successor has not, as yet, been elected by the Board of Directors.

February 10, 1964

ANNUAL STATEMENT

For the Year Ended December 31, 1963

OF THE CONDITION AND AFFAIRS OF THE

SEPARATE ACCOUNT BUSINESS OF THE

UNITED BENEFIT LIFE INSURANCE COMPANY

Organized under the Laws of the State of NEBRASKA, made to the

INSURANCE DEPARTMENT OF THE STATE OF

PURSUANT TO THE LAWS THEREOF

Incorporated AUGUST 9, 1926 Commenced Business NOVEMBER 26, 1926

Home Office 3316 FARNAM STREET (Street and Number), OMAHA, NEBRASKA 68131 (City or Town, Zone Number and State)

Mail Address 3316 FARNAM STREET (Street and Number), OMAHA, NEBRASKA 68131 (City or Town, Zone Number and State)

OFFICERS

President Deceased November 8, 1963

Secretary FRANK P. HANNAN

Treasurer M. T. CRUMMER

Vice-Presidents M. L. CRISS, N. L. CRISS, R. L. DALY, G. A. ECKLUND, A. W. RANDALL, R. J. TAYLOR, R. S. WAGNER, W. R. WELLMAN

VICE-PRESIDENT & Actuary DALE R. GUSTAFSON

DIRECTORS OR TRUSTEES

MELVIN BEKINS	OMAHA, NEBRASKA	DALE E. DAVIS	OMAHA, NEBRASKA	A. W. LARSEN	OMAHA, NEBRASKA
GEORGE B. BOLAND	OMAHA, NEBRASKA	FRANK P. HORAN	OMAHA, NEBRASKA	V. J. SKUTT	OMAHA, NEBRASKA
W. DALE CLARK	OMAHA, NEBRASKA	PHILIP E. HORAN	OMAHA, NEBRASKA	W. O. SWANSON	OMAHA, NEBRASKA
M. L. CRISS	OMAHA, NEBRASKA	DONALD K. HOWE	OMAHA, NEBRASKA	PAUL R. THOMPSON	OMAHA, NEBRASKA
R. L. DALY	OMAHA, NEBRASKA			JOSEPH J. VINARDI	OMAHA, NEBRASKA

State of NEBRASKA
County of DOUGLAS } ss:

G. A. Ecklund Vice President, Frank P. Hannan, Secretary, Dale R. Gustafson, Actuary, M. T. Crummer, Treasurer* of the United Benefit Life Insurance Company, being duly sworn, each for himself deposes and says that they are the above described officers of the said insurer, and that on the thirty-first day of December last, all of the herein described assets were the absolute property of the said insurer free and clear from any liens or claims thereon, except as herein stated, and that this annual statement, together with related exhibits, schedules and explanations therein contained, annexed or referred to are a full and true statement of all the assets and liabilities and of the condition and affairs of the said insurer as of the thirty-first day of December last, and of its income and deductions therefrom for the year ended on that date, according to the best of their information, knowledge and belief, respectively.

Subscribed and sworn to before me this

11th day of February, 1964

Notary Public

Frank P. Hannan Vice President.

Dale R. Gustafson Secretary.

Actuary.

Treasurer*.

*Or corresponding persons having charge of the accounts and finances of the insurer.

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ANNUAL STATEMENT FOR THE YEAR 1963
OF THE SEPARATE ACCOUNT BUSINESS

Form 1-S

OF THE UNITED BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

ASSETS

		DOLLARS	CENTS
1.	Bonds (Schedule D)	87,194	15
2.	Stocks (Schedule D)	196,465	42
3.	Mortgage loans on real estate (Schedule B)	0	
4.	Real estate (Schedule A)		
4.1	Properties occupied by the Company (less $ ..... encumbrances)		
4.2	Properties acquired in satisfaction of debt (less $ ..... encumbrances)		
4.3	Investment real estate (less $ ..... encumbrances)	0	
5.	Policy loans	0	
6.	Premium notes	0	
7.	Collateral loans (Schedule C)	0	
8.	Cash and bank deposits (Exhibit 13)	0	
9.	Separate Account Clearing	46	36
10.			
10A.	Cash and invested assets $ 283,705.93 (Items 1 to 10)		
11.	Amounts recoverable from reinsurers (Schedule S)	0	
12.			
13.			
14.			
15.			
16.			
17.	Life insurance premiums and annuity considerations deferred and uncollected	0	
18.	Accident and health premiums due and unpaid effective after September 30th of current year	0	
19.	Interest and other investment income due and accrued	2,584	40
20.	Net adjustment in assets and liabilities due to foreign exchange rates	0	
21.			
22.			
23.			
24.			
25.			
26.	TOTAL	286,290	33

NOTE: The items on this page to agree with Exhibit 13, Col. 4.

State basis of valuation:

Market quotations as required for determination of policy accumulations.

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ANNUAL STATEMENT FOR THE YEAR 1963
OF THE SEPARATE ACCOUNT BUSINESS

OF THE UNITED BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

LIABILITIES, SURPLUS AND OTHER FUNDS

		DOLLARS	CENTS
1.	Aggregate reserve for life policies and contracts (Exhibit 8)	110,159	69
2.	Aggregate reserve for accident and health policies (Exhibit 9, Part 1)	0	
3.	Supplementary contracts without life contingencies (Exhibit 10, Col. 3)	0	
4.	Policy and contract claims		
4.1	Life (Exhibit 11, Part 1)	0	
4.2	Accident and Health (Exhibit 9, Part 2)	0	
5.	Policyholders' dividend accumulations (Exhibit 10, Col. 6)	0	
6.	Policyholders' dividends due and unpaid	0	
7.	Provision for policyholders' dividends payable in following calendar year - estimated amounts:		
7.1	Apportioned for payment to . 19 . $	0	
7.2	Not yet apportioned	0	
8.	Amount provisionally held for deferred dividend policies not included in Item 7	0	
9.	Premiums and annuity considerations received in advance less $ discount; including $ accident and health premiums	0	
10.	Liability for premium deposit funds	0	
11.	Policy and contract liabilities not included elsewhere:		
11.1	Surrender values on cancelled policies	0	
11.2	Provision for experience rating refunds	0	
11.3			
12.			
13.	Commissions to agents due or accrued—Life and Annuity $ Accident and Health $	0	
14.	General expenses due or accrued (Exhibit 5, Line 11)	229	76
15.	Taxes, licenses and fees due or accrued, excluding federal income taxes (Exhibit 6, Line 8)	0	
15A.	Federal income taxes due or accrued (including $ 3,892.33 on capital gains)	3,892	33
16.	"Cost of collection" on premiums and annuity considerations deferred and uncollected in excess of total loading thereon	0	
17.	Unearned investment income (Exhibit 3, Col. 2)	0	
18.	Amounts withheld or retained by company as agent or trustee	0	
19.	Amounts held for agents' account (including $ agents' credit balances)	0	
20.	Remittances and items not allocated	0	
21.	Net adjustment in assets and liabilities due to foreign exchange rates	0	
22.	Liability for benefits for employees and agents if not included above	0	
23.	Borrowed money $ and interest thereon $	0	
24.	Dividends to stockholders declared and unpaid	0	
25.	Miscellaneous liabilities (give items and amounts)		
25.1	Mandatory securities valuation reserve	0	
25.2			
25.3			
25.4			
25.5			
25.6			
25.7			
25.8			
25.9			
26.	TOTAL LIABILITIES (Except Capital)	114,281	78
27.	Special surplus funds:		
27.1	$		0
27.2			
27.3	$ 0		
28.	Capital paid-up 0		
29.	Unassigned surplus 172,008.55		
30.	Total of Items 27 to 29	172,008	55
31.	TOTAL	286,290	33

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ANNUAL STATEMENT FOR THE YEAR 1963
OF THE SEPARATE ACCOUNT BUSINESS

Form 1-S

OF THE UNITED BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

SUMMARY OF OPERATIONS
(ACCRUAL BASIS)

		DOLLARS	CENTS
1.	Premiums and annuity considerations (Exhibit 1, Part 1)		
1.1	Life	95,155	00
1.2	Accident and health	0	
2.	Considerations for supplementary contracts with life contingencies	0	
3.	Considerations for supplementary contracts without life contingencies and dividend accumulations	0	
4.	Net investment income and capital gains and losses (Exhibit 2)	30,944	52
5.			
6.			
7.	TOTAL	126,099	52
	DEDUCT:		
8.	Death benefits		
9.	Matured endowments		
10.	Annuity benefits	4,061	20
11.	Disability benefits		
12.	Surrender benefits		
12A.	Group conversions		
13.	Benefits under accident and health policies		
14.	Interest on policy or contract funds		
15.	Payments on supplementary contracts with life contingencies		
16.	Payments on supplementary contracts without life contingencies and of dividend accumulations		
16A.	Amounts transferred from separate accounts		
16B.	Payments of withdrawal benefits		
17.	Increase in aggregate reserve for policies and contracts with life contingencies	75,926	33
18.	Increase in reserve for supplementary contracts without life contingencies and for dividend accumulations		
19.			
20.	Subtotal (Items 8 to 19)	79,987	53
21.	Commissions on premiums and annuity considerations		
22.			
23.	General insurance expenses (Exhibit 5, Cols. 1 and 2, Line 13)	25,153	19
24.	Insurance taxes, licenses and fees, excluding federal income taxes (Exhibit 6, Cols. 1 and 2, Line 10)		
25.	Increase in loading on and cost of collection in excess of loading on deferred and uncollected premiums		
26.			
27.	Total (Items 20 to 26)	105,140	72
28.	Net gain from operations before dividends to policyholders and federal income taxes (Item 7 minus Item 27)	20,958	80
29.	Dividends to life policyholders (Exhibit 7)	0	
30.	Dividends on accident and health policies (Exhibit 7)	0	
31.	Increase in amount provisionally held for deferred dividend policies	0	
32.	TOTAL (Items 29 to 31)	0	
32A.	Net gain from operations after dividends to policyholders and before federal income taxes (Item 28 minus Item 32)	20,958	80
32B.	Federal income taxes incurred	3,316	11
33.	NET GAIN FROM OPERATIONS AFTER DIVIDENDS TO POLICYHOLDERS AND FEDERAL INCOME TAXES (Item 32A minus Item 32B)	17,642	69

SURPLUS ACCOUNT

		DOLLARS	CENTS
34.	Special surplus funds December 31, previous year	0	
35.	Unassigned surplus December 31, previous year	154,365	86
36.			
36A.			
36B.			
37.	Net gain (from Item 33)	17,642	69
38.			
39.	Surplus paid in	0	
40.	Net gain from non-admitted and related items (Exhibit 14, Col. 3, Line 40)	0	
41.	Decrease in mandatory securities valuation reserve	0	
42.	TOTAL	172,008	55

		DOLLARS	CENTS
43.	Dividends to stockholders		
44.			
44A.			
44B.			
45.			
46.	Increase in reserve on account of change in valuation basis		
47.	Net loss from non-admitted and related items (Exhibit 14, Col. 3, Line 40)		
48.	Increase in mandatory securities valuation reserve		
49.	Special surplus funds December 31, current year (Item 27, Page 3)		
50.	Unassigned surplus December 31, current year (Item 29, Page 3)	172,008	55
51.	TOTAL	172,008	55

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ANNUAL STATEMENT FOR THE YEAR 1963 OF THE SEPARATE ACCOUNT BUSINESS OF THE UNITED BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

ANALYSIS OF OPERATIONS BY LINES OF BUSINESS
(Gain and Loss Exhibit)

	Total (1)	Industrial Life (Including Total and Permanent Disability and Accidental Death Benefits) (2)	Ordinary: Life Insurance (3)	Ordinary: Total and Permanent Disability (4)	Ordinary: Additional Accidental Death (5)	Ordinary: Individual Annuities (6)	Ordinary: Supplementary Contracts (7)	Group: Life Insurance (8)	Group: Annuities (9)	Accident and Health: Group (10)	Accident and Health: Individual (11)
1. Premiums and annuity considerations (Exhibit 1, Part 1)	95,155.00					95,155.00	X X X				
2. Considerations for supplementary contracts with life contingencies	0	N	X X X	X X X	X X X	X X X	N	N	N	X X X	X X X
3. Considerations for supplementary contracts without life contingencies and dividend accumulations	0	0	N 0 N	N 0 N	N 0 N	0	0	0	0	N 0 N	N 0 N
4. Net investment income and capital gains and losses (Exhibit 2)	30,944.52	N				30,944.52	N	N	N		
5. ...											
6. ...											
7. TOTAL	126,099.52	E	E	E	E	126,099.52	E	E	E	E	F
8. Death benefits	0		X X X			X X X			X X X	X X X	X X X
9. Matured endowments	0		X X X	X X X	X X X	X X X			X X X	X X X	X X X
10. Annuity benefits	4,061.20		X X X	X X X	X X X	4,061.20		X X X		X X X	X X X
11. Disability benefits	0		X X X		X X X	0				X X X	X X X
12. Surrender benefits	0			X X X	X X X	X X X			X X X	X X X	X X X
12A. Group conversions	0				X X X	X X X			X X X		
12B. Transfers on account of group package policies and contracts	X X X	X X X	X X X	X X X	X X X	X X X	X X X				X X X
13. Benefits under accident and health policies	0	X X X	X X X	X X X	X X X	X X X	X X X	X X X	X X X		
14. Interest on policy or contract funds	0					0					
15. Payments on supplementary contracts with life contingencies	0		X X X	X X X	X X X	X X X				X X X	X X X
16. Payments on supplementary contracts without life contingencies and of dividend accumulations	0					0					
16A. Amounts transferred from separate accounts	0					0					
16B. Payments of withdrawal benefits	0					0					
17. Increase in aggregate reserve for policies and contracts with life contingencies	75,926.33					75,926.33					
18. Increase in reserves for supplementary contracts without life contingencies and for dividend accumulations	0					0					
19. ...											
20. SUBTOTAL (Items 8 to 19)	79,987.53					79,987.53					
21. Commissions on premiums and annuity considerations	0					0					
22. ...											
23. General insurance expenses (Exhibit 5, Cols. 1 and 2, Line 13)	25,153.19					25,153.19					
24. Insurance taxes, licenses and fees, excluding federal income taxes (Exhibit 6, Cols. 1 and 2, Line 10)	0					0					
25. Increase in loading on and cost of collection in excess of loading on deferred and uncollected premiums	0					0					
25A. Adjustments between accounts	0					0					
26. ...											
27. TOTAL (Items 20 to 26)	105,140.72					105,140.72					
28. Net gain from operations before dividends to policyholders and federal income taxes (Item 7 minus Item 27)	20,958.80					20,958.80					
29. Dividends to life policyholders (Exhibit 7)	0					0					
30. Dividends on accident and health policies (Exhibit 7)	0	X X X	X X X	X X X	X X X	0	X X X	X X X	X X X	X X X	X X X
31. Increase in amounts provisionally held for deferred dividend policies	0					0					
32. TOTAL (Items 29 to 31)	0					0				X X X	X X X
32A. Net gain from operations after dividends to policyholders and before federal income taxes (Item 28 minus Item 32)	20,958.80					20,958.80					
32B. Federal income taxes incurred	3,316.11					3,316.11					
33. Net gain from operations after dividends to policyholders and federal income taxes (Item 32A minus Item 32B)	17,642.69					17,642.69					

Form 1-S ANNUAL STATEMENT FOR THE YEAR 1963 OF THE SEPARATE ACCOUNT BUSINESS OF THE UNITED BENEFIT LIFE INSURANCE COMPANY 74
(Write or stamp name of Company)

ANALYSIS OF INCREASE IN RESERVES DURING THE YEAR

(Gain and Loss Exhibit)

	TOTAL (1)	INDUSTRIAL LIFE (Including Total and Permanent Disability and Accidental Death Benefits) (2)	ORDINARY					GROUP	
			Life Insurance (3)	Total and Permanent Disability (4)	Accidental Death Benefits (5)	Individual Annuities (6)	Supplementary Contracts (7)	Life Insurance (8)	Annuities (9)
1. Reserve Dec. 31 of previous year	34,233.36	N O N E	N O N E	N O N E	N O N E	34,233.36	N O N E	N O N E	N O N E
2. Tabular net premiums or considerations	72,326.86					72,326.86			
3. Considerations for supplementary contracts without life contingencies and dividend accumulations	0					0			
4. Present value of disability claims incurred	0		X X X		X X X	0	X X X		
5. Tabular interest	7,660.67					7,660.67			
6. Tabular less actual reserve released	0	X X X	X X X		X X X	0			
7. Increase in reserve on account of change in valuation basis	0					0			
8. Other increases (net)	0					0			
9. TOTALS (Items 1 to 8)	114,220.89					114,220.89			
10. Tabular cost	0					0	X X X		
11. Reserves released by death	0			X X X	X X X	X X X	X X X		X X X
12. Reserves released by other terminations (net)	4,061.20					4,061.20			
13. Annuity, supplementary contract, disability and accumulated dividend payments	0					0			
14. TOTAL DEDUCTIONS (Items 10 to 13)	4,061.20					4,061.20			
15. Reserve Dec. 31 of current year	110,159.69					110,159.69			

Form 1 S

ANNUAL STATEMENT FOR THE YEAR 1963 OF THE SEPARATE ACCOUNT BUSINESS OF THE UNITED BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

EXHIBIT 1

	Total (1)	Industrial Life (Including Total and Permanent Disability and Accidental Death Benefits) (2)	Ordinary: Life Insurance (3)	Ordinary: Total and Permanent Disability (4)	Ordinary: Additional Accidental Death (5)	Ordinary: Individual Annuities (6)	Group: Life Insurance (7)	Group: Annuities (8)	Accident and Health: Group (9)	Accident and Health: Individual (10)	
PART 1—Premiums and Annuity Considerations (Gross, Less Reinsurance Ceded)											
FIRST YEAR (Other Than Single)											
1. Uncollected	0	N	N	N	N	0	N	N	N	N	1.
2. Deferred	0					0					2.
3. Line 1 + Line 2	0	0	0	0	0	0	0	0	0	0	3.
4. Advance	0					0					4.
5. Line 3 — Line 4	0	N	N	N	N	0	N	N	N	N	5.
6. Collected during year	34,040.00					34,040.00					6.
7. Line 5 + Line 6	34,040.00	E	E	E	E	34,040.00	E	E	E	E	7.
8. Previous year (uncollected + deferred — advance)	0					0					8.
9. First year premiums and considerations Line 7 — Line 8	34,040.00					34,040.00					9.
SINGLE											
10. Single premiums and considerations	0					0					10.
RENEWAL											
11. Uncollected	0					0					11.
12. Deferred	0					0					12.
13. Line 11 + Line 12	0					0					13.
14. Advance	0					0					14.
15. Line 13 — Line 14	0					0					15.
16. Collected during year	61,115.00					61,115.00					16.
17. Line 15 + Line 16	61,115.00					61,115.00					17.
18. Previous year (uncollected + deferred — advance)	0					0					18.
19. Renewal premiums and considerations Line 17 — Line 18	61,115.00					61,115.00					19.
TOTAL											
20. Total premiums and annuity considerations Lines 9, 10 and 19 (to agree with Item 1, Page 4)	95,155.00					95,155.00					20.
PART 2—Dividends Applied, Reinsurance Ceded and Commissions Incurred											
DIVIDENDS APPLIED (Included in Part 1)											
21. To pay renewal premiums (Exhibit 7, Line 1)											21.
22. All other (Exhibit 7, Lines 2, 3 and 4)											22.
REINSURANCE CEDED (Deducted in Part 1)											
23. First year (other than single)											23.
24. Single											24.
25. Renewal											25.
26. Total											26.
COMMISSIONS INCURRED											
27. First year (other than single)											27.
28. Single											28.
29. Renewal											29.
30. Total (to agree with Item 21, Page 5)											30.

NONE

OF THE UNITED BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

EXHIBIT 2—NET INVESTMENT INCOME AND CAPITAL GAINS AND LOSSES
(Accrual Basis)

		DOLLARS	CENTS
1.	Total interest, dividends and real estate income (Exhibit 3, Col. 7, Line 10)	8,895	54
2.	Capital gains and losses (Exhibit 4, Col. 6, Line 10)	22,048	98
3.	Total investment income and capital gains and losses (Line 1, plus Line 2)	30,944	52
4.	Investment expenses (Exhibit 5, Col. 3, Line 13)	0	
5.	Taxes, licenses and fees, excluding federal income taxes (Exhibit 6, Col. 3, Line 10)	0	
6.	Depreciation on real estate	0	
7.			
8.	TOTAL (Lines 4 to 7 inclusive)	0	
9.	NET INVESTMENT INCOME AND CAPITAL GAINS AND LOSSES—Line 3 less Line 8 (to Item 4, Page 4)	30,944	52

EXHIBIT 3—INTEREST, DIVIDENDS AND REAL ESTATE INCOME

		COLLECTED DURING YEAR (1)	CURRENT YEAR UNEARNED (2)	CURRENT YEAR DUE (3)	CURRENT YEAR ACCRUED (4)	CURRENT YEAR NON-ADMITTED† (5)	PREVIOUS YEAR (3)+(4)−(2)−(5) (6)	EARNED DURING YEAR (1)−(2)+(3)+(4)−(5)−(6) (7)
1.	Interest on bonds	* 3,064.35	0	0	1,119.62	0	901.77	3,282.20
2.	Dividends on stocks	‡ 4,517.86	0	1,464.78	0	0	369.30	5,613.34
3.	Interest on mortgage loans	**						0
4.	Real estate income	***						0
5.	Interest on premium notes, policy loans and liens							0
6.	Interest on collateral loans							0
7.	Interest on bank deposits							0
8.	.....							0
9.	.....							0
10.	TOTALS	7,582.21	0	1,464.78	1,119.62	0	1,271.07	8,895.54

*Includes $ 0 accrual of discount less $ 0 amortization of premium and less $ 54.41 paid for accrued interest on purchases.
‡Excludes $ 0 paid for accrued dividends on purchases.
**Includes $ 0 accrual of discount less $ 0 amortization of premium and less $ 0 paid for accrued interest on purchases.
***Includes $ 0 for company's occupancy of its own buildings; and excludes $ 0 interest on encumbrances.

†State bases of exclusions:
Bonds
Stocks
Mortgage loans
Real estate
Collateral loans
Bank deposits

*EXHIBIT 4—CAPITAL GAINS AND LOSSES ON INVESTMENTS

		INCREASE IN BOOK VALUE (1)	PROFIT ON SALE OR MATURITY (2)	DECREASE IN BOOK VALUE (3)	LOSS ON SALE OR MATURITY (4)	NET GAIN (+) OR LOSS (−) FROM CHANGE IN DIFFERENCE BETWEEN BOOK AND ADMITTED VALUES (5)	NET GAINS (+) OR LOSSES (−) (1)+(2)−(3)−(4)+(5) (6)
1.	Bonds					-1,729.38	-1,729.38
2.	Stocks					23,778.36	23,778.36
3.	Mortgage loans					0	0
4.	Real estate			**		0	0
5.	Premium notes, policy loans and liens					0	0
6.	Collateral loans					0	0
7.	Cash and bank deposits					0	0
8.	Foreign exchange	X X X	X X X	X X X	X X X	0	0
9.	.....						
10.	TOTALS					22,048.98	22,048.98

DISTRIBUTION OF LINE 10, COL. (6). (Attach statement or memorandum explaining basis of division).

11.	Net realized capital gains (+) or losses (−) on assets disposed of during the year $, less $ reflected in previous years' statements	0
12.	Net unrealized capital gains (+) or losses (−) of the year	22,048.98

*Adjustments due to amortization to be reported in Exhibit 3.
**Excluding $ 0 depreciation on real estate included in Exhibit 2, Line 4.

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OF THE UNITED BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

EXHIBIT 5—GENERAL EXPENSES

		INSURANCE		INVESTMENT	TOTAL
		LIFE (1)	ACCIDENT AND HEALTH (2)	(3)	(4)
1.	Rent				
2.	Salaries and wages				
3.11	*Contributions for benefit plans for employees				
3.12	*Contributions for benefit plans for agents				
3.21	Payments to employees under non-funded benefit programs				
3.22	Payments to agents under non-funded benefit programs				
3.31	Other employee welfare				
3.32	Other agent welfare				
3.4					
4.1	Legal fees and expenses				
4.2	Medical examination fees				
4.3	Inspection report fees				
4.4	Fees of public accountants and consulting actuaries				
4.5	Expense of investigation and settlement of policy claims				
4.6					
5.1	Traveling expenses				
5.2	Advertising				
5.3	Postage, express, telegraph and telephone				
5.4	Printing and stationery				
5.5	Cost or depreciation of furniture and equipment				
5.6	Rental of equipment				
5.7					
6.1	Books and periodicals				
6.2	Bureau and association dues				
6.3	Insurance, except on real estate				
6.4	Miscellaneous losses				
6.5	Collection and bank service charges				
6.6	Sundry general expenses				
6.7	Group service and administration fees				
6.8					
7.1	Agency expense allowance				
7.2	Agents' balances charged off (less $ recovered)				
7.3	Agency conferences other than local meetings				
8.1					
8.2					
9.1	Real estate expenses				
9.2	Investment expenses not included elsewhere				
9.3	Contractual expense allowance	25,078.53	0	0	25,078.53
10.	GENERAL EXPENSES PAID	25,078.53	0	0	25,078.53 (To Line 27, Exhibit 2)
11.	General expenses unpaid December 31, current year	229.76	0	0	229.76
12.	General expenses unpaid December 31, previous year	155.10	0	0	155.10
13.	General expenses incurred during year (10+11−12)	25,153.19 (To Item 23, Page 4)	0	0 (To Line 4, Exhibit 2)	25,153.19

A. Compensation to agents on a plan other than commissions, included in Col. (1): First year $, Renewal $

B. Agency supervision, except Home Office, included in Col. (1): Line 2 $, Line 5.1 $, Line $

C. Branch office expenses other than those in A and B included in Col. (1): Line 1 $, Line 2 $, All other lines $

*These items include $ on account of prior service.

EXHIBIT 6—TAXES, LICENSES AND FEES (EXCLUDING FEDERAL INCOME TAXES)

		INSURANCE		INVESTMENT	TOTAL
		LIFE (1)	ACCIDENT AND HEALTH (2)	(3)	(4)
1.	Real estate taxes				
2.	State insurance department licenses and fees				
3.	State taxes on premiums				
4.	Other state taxes, incl. $ Social Security	NONE			
5.	U. S. Social Security taxes				
6.	All other taxes				
7.	TAXES, LICENSES AND FEES PAID				(To Line 28.1, Exhibit 12)
8.	Taxes, licenses and fees unpaid December 31, current year				
9.	Taxes, licenses and fees unpaid December 31, previous year				
10.	Taxes, licenses and fees incurred during year (7+8−9)	(To Item 24, Page 4)		(To Line 5, Exhibit 2)	

NOTE: Canadian and other foreign taxes are included appropriately in Lines 1, 2, 3, 4 and 6.

EXHIBIT 7—DIVIDENDS TO POLICYHOLDERS

		LIFE	ACCIDENT AND HEALTH
1.	Applied to pay renewal premiums		
2.	Applied to shorten the endowment or premium-paying period		
3.	Applied to provide paid-up additions		
4.	Applied to provide paid-up annuities		
5.	TOTAL LINES 1-4		
6.	Paid in cash	NONE	
7.	Left on deposit with the company		
8.			
9.	TOTAL LINES 5-8		
10.	Amount due and unpaid (Item 6, Page 3)		
11.	Provision for annual dividend policies, including $ terminal dividends (Item 7, Page 3, in part)		
12.	Provision for deferred dividend policies (Item 7, Page 3, in part)		
13.	TOTAL LINES 10-12		
14.	Line 13 of previous year		
15.	TOTAL DIVIDENDS TO POLICYHOLDERS (Lines 9+13−14)	(To Item 29, Page 4)	(To Item 30, Page 4)

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OF THE UNITED BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

EXHIBIT 8—AGGREGATE RESERVE FOR LIFE POLICIES AND CONTRACTS

Valuation Standard (Indicate mortality and interest bases and valuation method by years of issue and in the case of annuities indicate whether immediate, deferred or both) (1)	Total (2)	Industrial (3)	Ordinary (4)	Group (5)	
A. Life Insurance:					
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					
21.					
22.					
23. Total (Gross)					
24. Reinsurance ceded					
25. Total (Net)					
B. Annuities (excluding supplementary contracts with life contingencies):					
1. Accumulation at monthly rate depending		X X X			
2. on investment experience. Deferred	110,159.69	X X X	110,159.69		
3.		X X X			
4.		X X X			
5.		X X X			
6.		X X X			
7.		X X X			
8.		X X X			
9.		X X X			
10.		X X X			
11.		X X X			
12.		X X X			
13.		X X X			
14.		X X X			
15.		X X X			
16.		X X X			
17.		X X X			
18.		X X X			
19.		X X X			
20.		X X X			
21.		X X X			
22.		X X X			
23. Total (Gross)	110,159.69	X X X	110,159.69		
24. Reinsurance ceded	0	X X X	0		
25. Total (Net)	110,159.69	X X X	110,159.69		
C. Supplementary Contracts With Life Contingencies:					
1.					
2.					
3.					
4.					
5. Total (Gross)					
6. Reinsurance ceded					
7. Total (Net)					
D. Accidental Death Benefits:					
1.					
2.					
3.					
4.					
5. Total (Gross)					
6. Reinsurance ceded					
7. Total (Net)					
E. Disability—Active Lives:					
1.					
2.					
3.					
4.					
5.					
6.					
7. Total (Gross)					
8. Reinsurance ceded					
9. Total (Net)					
F. Disability—Disabled Lives:					
1.					
2.					
3.					
4.					
5.					
6.					
7. Total (Gross)					
8. Reinsurance ceded					
9. Total (Net)					

OF THE UNITED BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

EXHIBIT 8—AGGREGATE RESERVE FOR LIFE POLICIES AND CONTRACTS (Continued)

Valuation Standard (Indicate mortality and interest bases and valuation method by years of issue) (1)	Total (2)	Industrial (3)	Ordinary (4)	Group (5)
G. Miscellaneous Reserves:				
1. For excess of valuation net premiums over corresponding gross premiums on respective policies, computed according to the standard of valuation required by this state				
2. For non-deduction of deferred fractional premiums or return of premiums at the death of the insured				
3. For surrender values in excess of reserves otherwise required and carried in this schedule				
4.				
5.				
6.				
7. Total (Gross)				
8. Reinsurance ceded				
9. Total (Net)				
H. Grand Total (Net)—Item 1, Page 3	110,159.69		110,159.69	

EXHIBIT 8A—CHANGES IN BASES OF VALUATION DURING THE YEAR
(Including supplementary contracts set up on a basis other than that used to determine benefits)

	Description of Valuation Class	Valuation Bases Changed from	Valuation Bases Changed to	Increase in Actuarial Reserve Due to Change
1.	NONE			
2.				
3.				
4.				
5.				
6.				
7.	Total (to agree with Item 7, Page 6)			

GENERAL INTERROGATORIES

1. Has the company ever issued both participating and non-participating policies? Answer: No
2. Does the company at present issue both participating and non-participating policies? Answer: No
   If not, state which kind is issued.
   Answer:
3. State the amount of insurance, if any, on which the gross premiums are less than the net premiums according to the standard of valuation required by this State.
   Answer: $ 0
   The additional reserve to cover deficiencies in gross premiums must be included in Exhibit 8. If not reported in G. 1, above, state amount $
4. Does the Company waive deduction of deferred fractional premiums at death on any of its business?
   Answer: No
5. State the amounts of insurance in force under each of the following plans:

	Non-Participating	Participating: Annual Div.	Participating: Def. Div.
Industrial			
Ordinary	NONE		
Group			
Totals			

6. Is any surrender value promised in excess of the reserve as legally computed? Answer: No If so, the amount of such excess must be included in G 3 above. Has this been done? Answer:
7. Attach statement of methods employed in the valuation of policies issued at, or subsequently subject to, an extra premium or in the valuation of policies otherwise issued on lives classed as substandard for the plan of contract issued or on special class lives (including paid-up insurance).
8. Has the company any assessment or stipulated premium policies in force? Answer: No If so, state:
   Amount of insurance $
   Amount of reserve $
   Basis of reserve:
   Basis of regular assessments:
   Basis of special assessments:
   Assessments collected during year $

EXHIBIT 9—AGGREGATE RESERVE AND POLICY CLAIM LIABILITY FOR ACCIDENT AND HEALTH POLICIES

	Total (1)	Group Accident and Health (2)	Individual Policies: Accident Only (3)	Individual Policies: Accident and Health (4)	Individual Policies: Non-Cancellable Accident and Health (5)	Individual Policies: Hospital and Medical Expenses (6)
PART 1—Aggregate Reserve						
1. Unearned premium reserve	NONE					
2. Additional reserves for guaranteed renewable policies*						
3. Present value of amounts not yet due on claims						
4. Reserve for future contingent benefits (deferred maternity and other similar benefits)						
5.						
6.						
7. Total (Gross)						
8. Reinsurance ceded						
9. Total (Net), (to Item 2, Page 3)						
Part 2—Policy Claim Liability End of Current Year						
1. Due and unpaid	NONE					
2. In course of settlement						
3. Incurred but unreported (less reinsurance ceded)						
4. Total						
5. Less amounts recoverable on unpaid losses for reinsurance ceded (Schedule S)						
6. Net Liability (to Item 4.2, Page 3)						

*Attach statement as to valuation standard used in calculating this reserve.

†Include portion of liability applicable to assumed "accrued" payments. Reserve for unaccrued payments appears in Item 2, Page 3 (see Part 1).

EXHIBIT 10—SUPPLEMENTARY CONTRACTS WITHOUT LIFE CONTINGENCIES AND DIVIDEND ACCUMULATIONS

	Valuation Rate (1)	Contract Rate or Rates ‡ (2)	Supplementary Contracts Without Life Contingencies: Present Value of Amounts Not Yet Due (3)	Supplementary Contracts Without Life Contingencies: Amounts Left on Deposit (4)	Supplementary Contracts Without Life Contingencies: Totals (5)	Dividend Accumulations (6)
1.			NONE			
2.						
3.						
4.						
5.						
6.						
7. Totals (as per Items 3 and 5, Page 3)						

‡Show contract rate or rates corresponding to each valuation rate.

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(Write or stamp name of Company)

EXHIBIT 11—POLICY AND CONTRACT CLAIMS FOR OTHER THAN ACCIDENT AND HEALTH POLICIES

PART 1—Liability End of Current Year

	Total (1)	Industrial Life (Including Total and Permanent Disability and Accidental Death Benefits) (2)	Ordinary: Life Insurance (3)	Ordinary: Total and Permanent Disability (4)	Ordinary: Additional Accidental Death (5)	Ordinary: Individual Annuities (6)	Ordinary: Supplementary Contracts (7)	Group: Life Insurance (8)	Group: Annuities (9)
1. Due and unpaid				NONE					
2. In course of settlement:									
2.1 Resisted									
2.2 Other									
3. Incurred but unreported (less reinsurance ceded)									
4. Total									
5. Less amounts recoverable on unpaid losses for reinsurance ceded (Schedule S)									
6. Net Liability (Column 1 to Item 4.1, Page 3)									

*Including matured endowments unpaid amounting to $ ..... **Including matured endowments unpaid amounting to $

†Include only portion of liability applicable to assumed "accrued" payments. Reserve for unaccrued payments, $ ..... appears in Item 1, Page 3. (See Exhibit 8, Section F.)

PART 2—Incurred During the Year

	Total (1)	Industrial Life (Including Total and Permanent Disability and Accidental Death Benefits) (2)*	Ordinary: Life Insurance (3)**	Ordinary: Total and Permanent Disability (4)	Ordinary: Additional Accidental Death (5)	Ordinary: Individual Annuities (6)*	Ordinary: Supplementary Contracts (7)	Group: Life Insurance (8)	Group: Annuities (9)
1. Settlements during the year	4,061.20					4,061.20			
2. Deduct reinsurance ceded	0	N	N	N	N	0	N	N	N
3. Net settlements. (Line 1 minus Line 2)	† 4,061.20	0	0	0	0	4,061.20	0	0	0
4. Net liability December 31, current year from Part 1	0	N	N	N	N	0	N	N	N
5. Amounts recoverable on paid losses for reinsurance ceded December 31, previous year	0	E	E	E	E	0	E	E	E
6. Line 3 plus Line 4 plus Line 5	4,061.20					4,061.20			
7. Net liability December 31, previous year	0					0			
8. Amounts recoverable on paid losses for reinsurance ceded December 31, current year (Schedule S)	0					0			
9. Line 7 plus Line 8	0					0			
10. Net Incurred Claims (Line 6 minus Line 9)	4,061.20					4,061.20			

*Including matured endowments amounting to $ 0 in Line 1 and $ 0 in Line 10. **Including matured endowments amounting to $ 0 in Line 1 and $ 0 in Line 10.

†Equals sum of Lines 16.1, 17 and 22, Exhibit 12. Includes $ 0 premiums waived under total and permanent disability benefits

OF THE UNITED BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

EXHIBIT 12—RECONCILIATION OF LEDGER ASSETS

			DOLLARS	CENTS
INCREASES IN LEDGER ASSETS				
1.	Premiums on life policies and annuity considerations (see Exhibit 1, Part 1)		95,155	00
2.	Accident and health cash premiums, including $ policy, membership and other fees		0	
3.	Consideration for supplementary contracts with life contingencies		0	
4.	Consideration for supplementary contracts without life contingencies including $ disability		0	
5.	Dividends left with the Company to accumulate at interest		0	
6.	Interest, dividends and real estate income (Exhibit 3, Column 1)		7,582	21
7.	Increase of paid-up capital during the year		0	
8.	From other sources (give items and amounts):			
	8.1			
	8.2			
	8.3			
9.	Borrowed money gross $, less amount repaid $		0	
10.				
11.				
12.				
13.	From sale or maturity of ledger assets (Exhibit 4, Column 2)		0	
14.	By adjustment in book value of ledger assets (Exhibit 4, Column 1)		0	
15.	TOTAL INCREASES IN LEDGER ASSETS		102,737	21
DECREASES IN LEDGER ASSETS				
16.	Policy and contract claims:			
	16.1 Life (see Exhibit 11, Part 2)	0		
	16.2 Accident and health	0		
17.	For annuities with life contingencies, excluding payments on supplementary contracts (including cash refund payments)	4,061.20		
18.	Premium notes and liens voided by lapse, less $ restorations	0		
19.	Surrender values	0		
19A.	Group conversions	0		
19B.	Interest on policy or contract funds	0		
20.	Dividends to policyholders:			
	20.1 Life insurance and annuities (Exhibit 7)	0		
	20.2 Accident and health (Exhibit 7)	0		
21.	TOTAL PAID POLICYHOLDERS		4,061	20
22.	Paid for claims on supplementary contracts:			
	22.1 With life contingencies		0	
	22.2 Without life contingencies		0	
22A.	Amounts transferred from separate accounts	0	0	
22B.	Payments of withdrawal benefits		0	
23.	Dividends and interest thereon held on deposit disbursed during the year		0	
24.				
25.				
26.	Commissions to agents (less commissions on reinsurance):			
	26.1 Life insurance and annuities (including $ commuted commissions)			
	26.2 Accident and health (including $ commuted commissions)			
	26.3 Policy, membership and other fees retained by agents		0	
27.	General expenses (Exhibit 5, Line 10)		25,078	53
28.1	Taxes, licenses and fees, excluding federal income taxes (Exhibit 6, Line 7)		0	
28.2	Federal income taxes (including $ on capital gains)		0	
29.	Decrease of paid-up capital during the year		0	
30.	Paid stockholders for dividends (cash $, stock $)		0	
31.	Borrowed money repaid gross $ less amount borrowed $		0	
32.	Interest on borrowed money		0	
33.				
34.				
35.				
36.	From sale or maturity of ledger assets (Exhibit 4, Column 4)		0	
37.	By adjustment in book value of ledger assets (Exhibit 4, Column 3 and Exhibit 2, Line 4)		0	
38.	TOTAL DECREASES IN LEDGER ASSETS		29,139	73
RECONCILIATION BETWEEN YEARS				
39.	Amount of ledger assets December 31st of previous year		201,300	84
40.	Increase (+) or decrease (—) in ledger assets during the year (Line 15 minus Line 38)		73,597	48
41.	TOTAL — LEDGER ASSETS DECEMBER 31st OF CURRENT YEAR		274,898	32

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EXHIBIT 13—ASSETS

	Ledger Assets (1)	Non-Ledger Assets (2)	Assets Not Admitted (3)	Net Admitted Assets (4)
1. Bonds	88,426.03		1,231.88	87,194.15
2. Stocks	186,425.93	10,039.49		196,465.42
3. Mortgage loans on real estate:				
3.1 First liens	0			0
3.2 Other than first liens	0			0
4. Real estate (less $ encumbrances):				
4.1 Properties occupied by the company	0			0
4.2 Properties acquired in satisfaction of debt	0			0
4.3 Investment real estate	0			0
5. Policy loans	0			0
6. Premium notes (including $ for first year premiums)	0			0
7. Collateral loans	0			0
8. Cash and bank deposits:				
8.1 Cash in company's office	0			0
8.2 Deposits in banks and trust companies (Schedule E)	0			0
9. Separate account clearing	46.36			46.36
10.				
11. Amounts recoverable from reinsurers	0			0
12. Other assets (give items and amounts):				
12.1 Agents' balances (debit $ credit $)	0			0
12.2 Bills receivable	0			-0-
12.3 Furniture and equipment	0			-0-
12.4 Cash advanced to or in hands of officers or agents	0			0
12.5 Loans on personal security, endorsed or not	0			-0-
12.6				
13. ...				
14.				
15. ...				
16.				
17. Life insurance premiums and annuity considerations deferred and uncollected on in force Dec. 31st of current year (less premiums on reinsurance ceded):				
17.1 Industrial uncollected (excluding $ loading)				
17.2 Ordinary deferred and uncollected—New business (excluding $ loading)				
17.3 Ordinary deferred and uncollected—Renewal (excluding $ loading)				
17.4 Group life deferred and uncollected (excluding $ loading)				
17.5 Group annuity uncollected (excluding $ loading)				
17.6 Total (to Col. 2)	0			0
18. Accident and health premiums due and unpaid	0			0
19. Interest and real estate income due and accrued:				
19.1 Interest due and accrued	0	1,119.62		1,119.62
19.2 Real estate income due and accrued	0	0		0
19.3 Dividends declared	0	1,464.78		1,464.78
20. Net adjustment in assets and liabilities due to foreign exchange rates	0	0		0
21.				
22.				
23.				
24.				
25.				
26. Totals	274,898.32	12,623.89	1,231.88	286,290.33

EXHIBIT 14—ANALYSIS OF NON-ADMITTED ASSETS AND RELATED ITEMS
(Excluding Investment Adjustments Not Listed)

	End of Previous Year (1)	End of Current Year (2)	Changes for Year Increase (—) or Decrease (+) (3)
27. Company's stock owned			X X X X X
28. Loans on company's stock			
29. Supplies, stationery, printed matter			
30. Furniture and equipment			X X X X X
31. Commuted commissions			
32. Agents' balances (net)			
33. Cash advanced to or in the hands of officers or agents	NONE		
34. Loans on personal security endorsed or not			
35. Bills receivable			
36. Premium notes, etc., in excess of net value and other policy liabilities on individual policies			X X X X X
37. Accident and health premiums due and unpaid, effective prior to October 1			
38. Other assets not admitted (itemize):			
38.1			
38.2			
38.3			
39. Agents' credit balances (Page 3, Item 19 inside)			
40. Total Change (Col. 3)*	X X X X X	X X X X X	

*(Carry to Item 10, Page 4 if (+), or to Item 47, Page 4 if (—))

Form 1-S ANNUAL STATEMENT FOR THE YEAR 1963 OF THE SEPARATE ACCOUNT BUSINESS OF THE UNITED BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

ORDINARY BUSINESS

EXHIBITS OF INSURANCE POLICIES—PAID-FOR BUSINESS ONLY

The following is a correct statement of the **ORDINARY** business of the year on policy account as it stood at close of business December 31. Additional accidental Death Benefits provided in life policies must **NOT** be included in this exhibit.

CLASSIFICATION	1. Whole Life and Endowment Policies (Excluding Group)		2. Term and Other Policies (Excluding Group), including Return Premium Additions		3. Group Policies			4. Additions to Policies by Dividends	5. Total Numbers and Amounts	
	No.	Amount	No.	Amount	Number of Policies	Number of Certificates	Amount	Amount	No. of Policies	Amount
1. At end of previous year										
2. *Issued during year										
2A. †Reinsurance assumed										
3. Revived during year										
4. **Increased during year										
4A. Totals, lines 2 to 4, inclusive										
5. Totals before transfers										
TRANSFERS:										
6. Deductions										
7. Additions										
8. Balance of transfers										
9. Totals after transfers										
DEDUCT CEASED BY:										
10. Death										
11. Maturity										
12. Disability										
13. Expiry										
14. Surrender										
15. Lapse										
16. Decrease										
17. **Withdrawal										
17A. ‡Reinsurance ceded										
18. Total terminated										
19. (a) Outstanding end of year										
20. Reinsurance ceded end of year										

NONE

INDUSTRIAL BUSINESS

The following is a correct statement of the **INDUSTRIAL** business of the year on policy account as it stood at close of business December 31.

CLASSIFICATION	1. Whole Life and Endowment Policies		2. Term and Other Policies, including Return Premium Additions		3. Additions to Policies by Dividends	4. Total Numbers and Amounts	
	No.	Amount	No.	Amount	Amount	No.	Amount
21. At end of previous year							
22. *Issued during year							
22A. †Reinsurance assumed							
23. Revived during year							
24. Increased during year							
24A. Totals, lines 22 to 24, inclusive							
25. Totals before transfers							
26. Transfers, deductions							
27. Transfers, additions							
28. Balance of Transfers							
29. Totals after transfers							
DEDUCT CEASED BY:							
30. Death							
31. Maturity							
32. Disability							
33. Expiry							
34. Surrender							
35. Lapse							
36. Decrease							
36A. ‡Reinsurance ceded							
37. Total terminated							
38. (a) Outstanding end of year							
39. Reinsurance ceded end of year							

NONE

NOTE.—Instalment policies and others involving supplementary contracts should be entered and deducted in above Exhibit of Policies for the commuted value of instalments only.

State the amount of (A) decreasing term insurance contained in Family Income, Mortgage Protection, etc., policies and riders, (B) additional insurance under non-decreasing term riders and (C) term insurance on wife and children under Family, Parent and Children, etc., policies and riders included above, as follows:

Line 2, Column 1 (A)..... (B)..... (C)..... Column 2 (A)..... Line 19, Column 1 (A)..... (B)..... (C)..... Column 2 (A).....

State basis of calculation under (A).....

*In this line should be included bona fide direct new business only. In case of Group policies, the initial coverage should be entered in this line. Paid-up and extended term insurance issued in lieu of other in-surance should be treated as a policy change. Has this been done? ANSWER: .....

(a) Paid-up insurance included in the final totals of items 19 and 38 (including additions to policies). No. of ORDINARY policies....., amount, $..... ; No. of INDUSTRIAL policies....., amount, $.....

Additional accidental Death Benefits included in life policies were in amount, $..... ; Debit Ordinary Business included in Column 3, Line 19: No. of policies....., amount $.....

†In this line should be reported all reinsurance assumed. Where the assumption of a block of business is involved, include such transaction herein, attaching exhibit indicating figures included in each line and column.

‡This is to include cession by reinsurance of the entire business of a company or of its business in a state or section of the country, but is not to include reinsurance ceded on individual risks.

**In case of Group policies, enter net of increases and withdrawals as positive figure in either item 4 or item 17.

§Includes $..... issued which was ceded as reinsurance during the year.

§§Includes..... certificates under..... policies for Group Insurance Plans, other than the Federal Employees Group Life Insurance Policy, where part of the insurance on each life is provided by policies of other insurance companies. After multiplying the number of certificates under each such policy by the respective proportions of the insurance provided by this company, the number of certificates under such policies changes from..... to..... and the total number of certificates outstanding changes from..... to.....

Form 1-S ANNUAL STATEMENT FOR THE YEAR 1963 OF THE SEPARATE ACCOUNT BUSINESS OF THE UNITED BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

EXHIBITS OF ANNUITIES (PAID-FOR BASIS) AND SUPPLEMENTARY CONTRACTS WITH LIFE CONTINGENCIES

CLASSIFICATION	1. Individual Annuities*		2. Group Annuities			3. Supplementary Contracts		
	No.	Annual Income**	Contracts	Certificates	Annual Income	No.	Annual Income	
1. Outstanding at end of previous year	129	128,093						
2. Issued during year	29	20,925						
3. Transferred from Insurance account during year								
4. Total	158	149,018	NONE			NONE		
5. Other net changes during year	2	5,110						
6. Outstanding at end of current year	156	143,908						

CLASSIFICATION OF ANNUITIES AND SUPPLEMENTARY CONTRACTS WITH LIFE CONTINGENCIES OUTSTANDING AT THE END OF THE YEAR

CLASSIFICATION	1. Individual Annuities*		2. Group Annuities			3. Supplementary Contracts		Total	
	No.	Annual Income	Contracts	Certificates	Annual Income	No.	Annual Income	No.	Annual Income
7. Income now payable	0	0						0	0
8. Deferred; fully paid	7	190	NONE			NONE		7	190
9. Deferred; not fully paid	149	143,718						149	143,718
10. Total	156	143,908						156	143,908

*Individual Annuities. Include here all survivorship annuities and deferred annuities, including contracts providing for deferred annuities purchased by accumulations during deferred period and which provide for a death benefit during the period of deferment substantially equal to the value of the non-forfeiture benefit available on lapse.

**Guaranteed minimum benefit - may be increased by investment results

SPECIAL DEPOSIT SCHEDULE

Showing all deposits or investments **NOT** *held for the protection of* **ALL** *the policyholders of the company*

NONE

SCHEDULE OF ALL OTHER DEPOSITS

Showing all deposits made with any government, province, state, district, county, municipality, corporation, firm or individual, except the regular deposits in banks and trust companies subject to check, and those shown in "Special Deposit Schedule" above

NONE

SCHEDULE A—Part 1

Showing all Real Estate **OWNED** *December 31 of Current Year, the Cost, Book and Market Value thereof, the Nature and Amount of all Liens and Encumbrances thereon, Including Interest Due and Accrued, etc.*

NONE

SCHEDULE A—Part 2

Showing all Real Estate **SOLD** *during the Year, including Payments during the Year on "Sales under Contract"*

NONE

SCHEDULE B—Part 1—Section 1

Summary of Mortgage Loans (including foreclosed liens subject to redemption) owned at December 31 of Current Year and changes therein during the year

NONE

SCHEDULE B—Part 1—Section 2

Summary of Mortgage Loans (including foreclosed liens subject to redemption) owned at December 31st of Current Year in each State and Foreign Country

NONE

SCHEDULE B—Part 2—Section 1

Mortgages owned at December 31 of Current Year upon which interest is not overdue more than three months, which are not in process of foreclosure or in course of voluntary conveyance to the company Show individually those which exceed $250,000 or ½% of admitted assets December 31 preceding year, whichever is smaller, and others upon which taxes, assessments or other liens are delinquent more than one year, classified by States in each sub-section. All others may be summarized.

NONE

SCHEDULE B—Part 2—Section 2

Mortgages owned at December 31 of Current Year upon which interest is overdue more than three months, which are not in process of foreclosure or in course of voluntary conveyance to the Company.

NONE

SCHEDULE B—Part 2—Section 3

All Mortgages owned at December 31 of Current Year in process of foreclosure (including those in which transfer of legal title is awaiting expiration of redemption or moratorium period) and including those where properties are in course of voluntary conveyance to the Company. Classify by States and list all items.

NONE

SCHEDULE B—Part 3

Mortgages foreclosed, properties transferred to real estate during the year, including properties acquired by voluntary conveyance to the Company. Classify by States and list all items.

NONE

SCHEDULE C—Part 1

Showing all Collateral Loans **IN FORCE** *December 31 of Current Year, and all Substitutions of Collateral Thereon During Said Year*

NONE

SCHEDULE C—Part 2

Showing all Collateral Loans **MADE** *During the year and all Substitutions of Collateral Thereon During Said Year*

NONE

SCHEDULE C—Part 3

Showing all Collateral Loans **DISCHARGED** *in Whole or in Part During the year and all Substitutions of Collateral Thereon During Said Year*

NONE

ANNUAL STATEMENT FOR THE YEAR 1963 OF THE SEPARATE ACCOUNT BUSINESS OF THE UNITED BENEFIT LIFE INSURANCE COMPANY

Write or Stamp Name

SCHEDULE D — SUMMARY

Bonds and Stocks OWNED *December 31 of Current Year*

(1) Description		(2) Book Value Dollars	Cts.	(3) Market Value (Excluding accrued interest) Dollars	Cts.	(4) Actual Cost (Excluding accrued interest) Dollars	Cts.	(5) Par Value of Bonds Dollars	Cts.	(6) *Amortized or Investment Value Dollars	Cts.	This column to be left blank
BONDS Governments (Including all obligations guaranteed by governments)	1. United States	28,113.53		27,756.65		28,113.53		28,000.00				
	2. Canada											
	3. Other Countries											
	4. Total	28,113.53		27,756.65		28,113.53		28,000.00				
States, Territories and Possessions (Direct and guaranteed)	5. United States											
	6. Canada											
	7. Other Countries											
	8. Total											
Political Subdivisions of States, Territories and Possessions (Direct and guaranteed)	9. United States											
	10. Canada											
	11. Other Countries											
	12. Total											
Special revenue and special assessment obligations and all non-guaranteed obligations of agencies and authorities of governments and their political subdivisions	13. United States											
	14. Canada											
	15. Other Countries											
	16. Total											
Railroads	17. United States											
	18. Canada											
	19. Other Countries											
	20. Total											
Public Utilities	21. United States	20,475.00		20,162.50		20,475.00		20,000.00				
	22. Canada											
	23. Other Countries											
	24. Total	20,475.00		20,162.50		20,475.00		20,000.00				
Industrial and Miscellaneous	25. United States	39,837.50		39,275.00		39,837.50		40,000.00				
	26. Canada											
	27. Other Countries											
	28. Total	39,837.50		39,275.00		39,837.50		40,000.00				
	29. Total Bonds	88,426.03		87,194.15		88,426.03		88,000.00				
STOCKS Railroad	30. United States											
	31. Canada											
	32. Other Countries											
	33. Total											
Public Utilities	34. United States	24,355.20		25,034.61		24,355.20						
	35. Canada											
	36. Other Countries											
	37. Total	24,355.20		25,034.61		24,355.20						
Banks, Trust and Insurance Companies	38. United States	7,915.57		7,885.59		7,915.57						
	39. Canada											
	40. Other Countries											
	41. Total	7,915.57		7,885.59		7,915.57						
Savings and Loan or Building and Loan Associations	42. United States											
	43. Canada											
	44. Other Countries											
	45. Total											
Industrial and Miscellaneous	46. United States	154,155.16		163,545.22		154,155.16						
	47. Canada											
	48. Other Countries											
	49. Total	154,155.16		163,545.22		154,155.16						
	50. Total Stocks	186,425.93		196,465.42		186,425.93						
	51. Total Bonds and Stocks	274,851.96		283,659.57		274,851.96						

*Companies, societies, and associations which do not amortize their bonds should leave this column blank.

SCHEDULE D — Verification Between Years

1.	Book value of bonds and stocks, per Items 1 and 2, Col. (1), Exhibit 13, previous year		$ 200,952.05
2.	Cost of bonds and stocks acquired, Col. (5), Part 3		83,901.90
3.	Increase by adjustment in book value:		
	(a) Col. (10), Part 1	$ 0	
	(b) Col. (9), Part 2	0	
	(c) Col. (9), Part 4	0	0
4.	Profit on sale of bonds and stocks, Col. (11), Part 4		0
5.	Total		284,853.95
6.	Deduct consideration for bonds and stocks sold, Col. (5), Part 4	$ 10,001.99	
7.	Decrease by adjustment in book value:		
	(a) Col. (11), Part 1	$ 0	
	(b) Col. (10), Part 2	0	
	(c) Col. (10), Part 4	0	0
8.	Loss on sale of bonds and stocks, Col. (12), Part 4	0	10,001.99
9.	Book value of bonds and stocks, per Items 1 and 2, Col. (1), Exhibit 13, current year		$ 274,851.96

Form 1

Bonds to be grouped in the following manner and each group arranged alphabetically (The listing in Groups 2, 3 and 4 should be alphabetical BY STATE.)
1 Governments (including all obligations guaranteed by governments)
2 States, Territories and Possessions (direct and guaranteed)
3 Political Subdivisions of States, Territories and Possessions (direct and guaranteed)
4 Special revenue and special assessment obligations and all non guaranteed obligations of agencies and authorities of governments and their political subdivisions
5 Railroads
6 Public Utilities
7 Industrial and Miscellaneous

Show sub-totals for each group.

ANNUAL STATEMENT FOR THE YEAR 1963 OF THE SEPARATE ACCOUNT BUSINESS OF THE UNITED BENEFIT LIFE INSURANCE COMPANY

Write or Stamp Name

SCHEDULE D — Part 1

Showing all BONDS *Owned December 31 of Current Year*

Supplemental columns for data concerning Amortization. SEE NOTE

(1) **DESCRIPTION Give complete and accurate description of all bonds owned, including the location of all street railway and miscellaneous companies. If bonds are serial issues give amount maturing each year	(2) INTEREST Rate of	(2) INTEREST *How Paid	(3) DATE OF Maturity Year	(3) DATE OF Maturity Month	(3) DATE OF ††Option Year	(3) DATE OF ††Option Call Price	(4) Book Value	(5) Par Value	(6) Rate Used to Obtain Market Value	(7) §§Market Value (excluding accrued interest)	(8) Actual Cost (excluding accrued interest)	(9) INTEREST Amount Due and Accrued Dec. 31 of Current Year on bonds not in default	(9) INTEREST Gross Amt Received During Year	(10) Increase by Adjustment in Book Value During Year	(11) Decrease by Adjustment in Book Value During Year	(12) Amount of Interest due and Accrued Dec. 31, Current Year, on bonds in default as to Principal or Interest	(13) §Are These Bonds Amortizable?	(14) Year Acquired	(15) Effective Rate of Interest at Which Purchase Was Made	(16) †Amortized or Investment Value Dec. 31 of Current Year	(17) ‡Increase in Amortized Value During Year	(18) ‡Decrease in Amortized Value During Year
GOVERNMENT, U. S. A.																						
U. S. Treasury Bills			1964	1			4,956.65	5,000.00	99.133	4,956.65*	4,956.65	29.08										
U. S. Treasury	4	F-A	1972	2			4,984.38	5,000.00	99	4,950.00*	4,984.38	75.00					1963					
U. S. Treasury	4	F-A	1980	2			4,962.50	5,000.00	98	4,900.00*	4,962.50	75.00	200.00				1963					
U. S. Treasury	4	F-A	1980	2			5,000.00	5,000.00	98	4,900.00*	5,000.00	75.00	100.00				1962					
U. S. Treasury	4 1/4	F-A	1992	2			8,210.00	8,000.00	100.625	8,050.00*	8,210.00	127.50	340.00				1963					
							28,113.53	28,000.00		27,756.65	28,113.53	381.56	640.00				1962					
PUBLIC UTILITIES, U. S. A.																						
Cleveland Electric Illuminating Company, First Mortgage	4 3/8	A-O	1994	4			5,031.25	5,000.00	98.50	4,925.00*	5,031.25	54.69	218.75									
Consolidated Edison Company of New York, Inc. First and Refunding Mortgage, Series U	4 5/8	M-N	1991	11			5,181.25	5,000.00	101.25	5,062.50*	5,181.25	38.54	231.25				1962					
Houston Lighting & Power Company, First Mortgage	4 3/4	M-N	1987	11			5,262.50	5,000.00	103.75	5,187.50*	5,262.50	39.58	237.50				1962					
Pacific Telephone and Telegraph Company, Debentures	4 3/8	F-A	1988	8			5,000.00	5,000.00	99.75	4,987.50*	5,000.00	82.64	218.75				1962					
							20,475.00	20,000.00		20,162.50	20,475.00	215.45	906.25									
INDUSTRIAL AND MISCELLANEOUS, U. S. A.																						
Aluminum Company of America, Debentures	4 1/4	J-J	1982	1			4,981.25	5,000.00	99.25	4,962.50*	4,981.25	106.25	212.50									
Caterpillar Tractor Co., Debentures	4 5/8	J-D	1986	6			5,225.00	5,000.00	102.25	5,112.50*	5,225.00	10.27	231.25				1962					
C.I.T. Financial Corporation, Debentures	4 5/8	J-J	1979	1			5,150.00	5,000.00	99.50	4,975.00*	5,150.00	115.63	231.25				1962					
General Motors Acceptance Corporation, Debentures	4 1/2	M-N	1985	11			4,975.00	5,000.00	99.50	4,975.00*	4,975.00	37.50					1962					
Procter & Gamble Company, Debentures	3 7/8	M-S	1981	3			4,775.00	5,000.00	94.25	4,712.50*	4,775.00	64.58	193.75				1963					
Standard Oil Company of California, Debentures	4 3/8	J-J	1983	7			5,062.50	5,000.00	99.75	4,987.50*	5,062.50	109.38	218.75				1962					
Texas Company (now Texaco Inc.), Debentures	3 5/8	M-N	1983	5			4,568.75	5,000.00	90.25	4,512.50*	4,568.75	30.21	181.25				1962					
United States Steel Corporation, Debentures	4 1/2	A-O	1986	4			5,100.00	5,000.00	100.75	5,037.50*	5,100.00	47.50	225.00				1962					
							39,837.50	40,000.00		39,275.00	39,837.50	521.32	1,493.75									
TOTALS							88,426.03	88,000.00		87,194.15	88,426.03	1,118.33	3,040.00									

* All market values are December 31, 1963 quotations less sales commissions

§§Where amortized value or any value other than the market value published in the Book of Valuations of Securities is entered in Column 7, insert a symbol alongside of the amount reported

*Insert Initial Letters of months in which interest is payable.

**Where a bond is payable in a foreign currency the par value and purchase price in that currency should be included as a part of the description

††Perpetual bonds, bonds in default as to principal or interest and bonds not amply secured, are to be entered in this column at market value. All companies must report amortized values whether or not this basis of valuation is used on page 2

‡Companies which use "Amortized Values" as "Book Values" may omit entering figures in these columns and provide the following footnote: "The increases and decreases in amortized values are the same as those shown in columns for 'Increase and Decrease by Adjustment in Book Value,' excepting as otherwise indicated."

§Answer "Yes," "No" or "Ne" per notation in book "Valuation of Securities," published by National Association of Insurance Commissioners

NOTE This supplemental information required of all Companies which amortize their bonds, is NOT to be used as a substitute for the information required in preceding columns but in addition thereto

††Show year and call price pertaining to option, if any, on which amortization is based. On bonds purchased at a premium, the call feature producing lowest amortized value should be used

Form 1

Stocks to be grouped in the following order and each group arranged alphabetically:-
Railroad (a) preferred (b) common
Public Utilities (a) preferred (b) common
Banks, Trust and Insurance Companies (a) preferred (b) common
Savings and Loan or Building and Loan Associations
Industrial and Miscellaneous (a) preferred (b) common *Show sub-totals for each group and classification*

ANNUAL STATEMENT FOR THE YEAR 1963 OF THE SEPARATE ACCOUNT B OF [illegible]

SCHEDULE D—Part 2

Name or Stamp Name

Showing all STOCKS *Owned December 31 of Current Year*

(1) DESCRIPTION — Give complete and accurate description of all stocks owned, and location of all street railway, bank, trust and miscellaneous companies.	(2) No. of Shares	(3) Par Value Per Share	(4) Book Value	(5) Rate Per Share Used to Obtain Market Value	(6) Market Value	(7) Actual Cost	(8) Dividends: Rate Declared in Each of Last Three Years 1961	1962	1963	Dividends: Amount Received During Year	(9) Increase, by Adjustment, in Book Value During Year	(10) Decrease, by Adjustment, in Book Value During Year	(11) Year Acquired
PUBLIC UTILITIES, COMMON													
American Telephone and Telegraph Company	50	33 1/3	6,656.11	139	6,906.05*	6,656.11	3.45	3.60	3.60	180.00			
Commonwealth Edison Company	77	12.50	3,424.32	49.625	3,785.02*	3,424.32	1.00	1.10	1.25	87.50			1962
Florida Power & Light Company	40		2,996.83	72.75	2,678.45*	2,996.83	1.06	1.18	1.26	38.40			1962-63
Southern California Edison Company	100	8 1/3	3,096.81	32	3,165.00*	3,096.81	.866	.936	1.005	100.50			1963
Texas Utilities Company	90		4,910.44	56.50	5,042.91*	4,910.44	1.02	1.10	1.18	71.00			1962
Virginia Electric and Power Company	75		3,270.69	43.875	3,257.18*	3,270.69	.866	.933	1.013	76.00			1962-63
	432		24,355.20		25,034.61	24,355.20				553.40			1962-63
BANKS, TRUST AND INSURANCE COMPANIES, COMMON													
Morgan Guaranty Trust Company, New York	27	25	2,921.25	110.625	2,954.95*	2,921.25	4.00	4.00	4.00	106.00			1962-63
Security First National Bank, Los Angeles	60	12.50	4,994.32	82.875	4,930.64*	4,994.32	1.60	1.60	1.60	24.00			1963
	87		7,915.57		7,885.59	7,915.57				130.00			
INDUSTRIAL AND MISCELLANEOUS, COMMON													
Ameraja Petroleum Corporation	60		4,328.45	69.375	4,124.69*	4,328.49	1.35	1.50	1.85				
American Can Company	150	12.50	6,918.38	43.625	6,463.75*	6,918.38	2.00	2.00	2.00	270.00			1963
Armstrong Cork Company	50	1	3,584.75	109.75	5,445.01*	3,584.75	1.70	1.90	2.10	105.00			1962-63
Bristol-Myers Company	90	1	4,220.44	58.375	5,211.50*	4,220.44	.60	.75	.90	81.00			1962
Caterpillar Tractor Co.	105		4,390.29	48	4,989.75*	4,390.29	1.00	1.00	1.15	46.00			1962-63
Chesebrough-Pond's Inc.	100	2	5,936.77	56	5,555.40*	5,936.77	.92	1.05	1.25	34.75			1963
Dow Chemical Company	61	5	4,013.76	66.75	4,155.78*	4,013.76	1.45	1.60	1.60	98.80			1963
E. I. du Pont de Nemours & Company	25	5	6,318.75	239.50	5,950.00*	6,318.75	7.50	7.50	7.75	193.75			1962-63
Eastman Kodak Company	50	10	5,766.49	115.50	5,732.22*	5,766.49	2.25	2.30	2.55	127.50			1962
General Electric Company	50	5	3,949.06	86.875	4,305.03*	3,949.06	2.00	2.00	2.00	100.00			1962
General Foods Corporation	65		5,313.72	89.625	5,782.80*	5,313.72	1.55	1.75	1.95	117.75			1962
General Motors Corporation	148	1 2/3	7,674.37	78.625	11,541.83*	7,674.37	2.50	3.00	4.00	644.50			1962-63
B. F. Goodrich Company	95	10	4,205.29	51.50	4,891.04*	4,205.29	2.20	2.20	2.20	209.00			1962
Goodyear Tire & Rubber Company	100		4,302.81	41.375	4,097.81*	4,302.81	.90	.95	1.00	100.00			1962
Gulf Oil Corporation	100	8.33 1/3	4,441.00	47	4,687.50*	4,441.00	1.10	1.45	1.60	160.00			1962
International Business Machines Corporation	30	5	15,101.25	506.75	15,157.50*	15,101.25	2.30	3.00	4.25	102.50			1962-63
International Paper Company	144	2.50	5,746.92	39.125	5,199.36*	5,746.92	1.05	1.05	1.05	107.63			1962-63
Johns-Manville Corporation	75	5	3,696.25	48.50	3,602.31*	3,696.25	2.00	2.00	2.00	25.00			1963
R. H. Macy & Co., Inc.	45	1	2,942.16	74.75	3,329.93*	2,942.16	2.00	2.20	2.20	22.00			1963
Merck & Co., Inc.	25	.16 2/3	2,365.88	109.25	2,730.59*	2,365.68	1.60	1.80	2.00	50.00			1962
Minneapolis-Honeywell Regulator Company	20	1.50	2,670.00	148	2,930.00*	2,670.00	2.00	2.00	2.00	40.00			1962
Minnesota Mining and Manufacturing Company	90		5,825.31	64.375	5,750.96*	5,825.31	.65	.80	.90	58.50			1962-63
National Cash Register Company	21	5	2,545.18	78.25	1,621.82*	2,545.18	1.20	1.20	1.20	25.20			1962
North American Aviation, Inc.	85	1	4,296.20	47.75	4,021.46*	4,296.20	2.00	2.00	2.00				1963
J. C. Penney Company	100	1	4,114.38	47	4,697.50*	4,114.38	1.50	1.50	1.50	150.00			1962
Phillips Petroleum Company	45	5	1,999.12	48.625	2,161.25*	1,999.12	1.70	1.85	1.975	88.88			1962
R. J. Reynolds Tobacco Company	80	5	5,079.33	42	3,326.20*	5,079.33	1.40	1.60	1.65	120.00			1962-63
Sears, Roebuck and Co.	50	3	4,099.81	97.625	4,839.84*	4,099.81	1.40	1.65	1.65	82.50			1962
Square D Company	50	5	2,384.81	49.75	2,458.06*	2,384.81	1.12	1.50	.90	15.00			1963
Standard Brands Incorporated	60		3,992.95	71.75	4,266.47*	3,992.95	1.70	1.85	2.05	123.00			1962
Standard Oil Company (Indiana)	60		3,386.26	63.625	3,781.41*	3,386.26	1.40	1.80	1.90	151.20			1962
Standard Oil Company (New Jersey)	80	7	4,429.57	75.75	6,016.94*	4,429.57	2.30	2.50	2.75	220.00			1962
Union Carbide Corporation	20		1,954.30	120.25	2,375.97*	1,954.30	3.60	3.60	3.60	72.00			1962
United States Gypsum Company	30	4	2,141.15	83.75	2,482.94*	2,141.15	3.00	3.00	3.10	93.00			1962
*All market values are December 31, 1963 quotations less sales commissions.	2,379		154,155.16		163,545.22	154,155.16				3,834.46			
TOTALS	2,698		186,425.93		196,465.42	186,425.93				4,517.86			

*Where any value other than the market value for preferred stocks as published in the Book of Valuations of Securities is entered in column 6, insert a symbol alongside of the amount reported.

Form 1

SCHEDULE D—Part 3

Bonds, preferred stocks and common stocks to be grouped separately showing sub-totals for each group.

Showing all Bonds and Stocks ACQUIRED *During the Current Year*

(1) DESCRIPTION Give complete and accurate description of each bond and stock, including location of all street railway, bank, trust and miscellaneous companies. If bonds are serial issues give amounts maturing each year.	(2) *Date Acquired	(3) *Name of Vendor	(4) No. of Shares of Stock	(5) Cost to Company (excluding accrued interest on bonds)	(6) Par Value of Bonds	(7) Paid For Accrued Interest and Dividends
BONDS						
U. S. Treasury Bills due 10-17-1963	Various	Salomon Bros. & Hutzler		9,921.24	10,000.00	
U. S. Treasury Bills due 1-30-1964	10-31	Salomon Bros. & Hutzler		4,956.65	5,000.00	
U. S. Treasury, 4% due 2-15-1972	9-27	Salomon Bros. & Hutzler		4,984.38	5,000.00	25.00
U. S. Treasury, 4% due 2-15-1980	3-28	First Boston Corporation		5,000.00	5,000.00	18.78
General Motors Acceptance Corporation, Debentures, 4-1/2% due 11-1-1985	11-15	Dean Witter & Co.		4,975.00	5,000.00	10.63
				29,837.27	30,000.00	54.41
COMMON STOCKS						
Commonwealth Edison Company	Various	The Company (Stock Dividend)	2			
Florida Power & Light Company	5-13	Harris, Upham & Co.	40	2,996.83		
Texas Utilities Company	6-28	Salomon Bros. & Hutzler	40	2,110.85		
Virginia Electric and Power Company	6-7	The Company (Stock Split)	25			
Morgan Guaranty Trust Company of New York	3-29	The Company (Stock Dividend)	2			
Security First National Bank, Los Angeles	Various	Various	60	4,994.32		
Amerada Petroleum Corporation	12-5	A. G. Becker & Co.	60	4,328.45		
American Can Company	6-4	Harris, Upham & Co.	30	1,402.59		
Bristol-Myers Company	10-31	The Company (Stock Split)	45			
Caterpillar Tractor Co.	Various	Harris, Upham & Co.	105	4,390.29		
Chesebrough-Pond's Inc.	Various	Various	100	5,936.77		
Dow Chemical Company	6-7	The Company (Stock Dividend)	1			
General Foods Corporation	3-1	H. C. Wainwright & Co.	20	1,638.68		
International Business Machines Corporation	Various	Various	15	6,825.00		
International Paper Company	12-30	Clark, Dodge & Co.	60	1,921.48		
International Paper Company	12-30	The Company (Stock Dividend)	2			
Johns-Manville Corporation	Various	Various	75	3,696.25		
R. H. Macy & Co., Inc.	Various	Various	45	2,942.16		
Minnesota Mining and Manufacturing Company	6-4	Harris, Upham & Co.	50	2,994.31		
North American Aviation, Inc.	Various	Various	85	4,296.20		
R. J. Reynolds Tobacco Company	3-1	H. C. Wainwright & Co.	30	1,205.64		
Square D Company	9-11	Thomson & McKinnon	50	2,384.81		
			942	54,044.63		
TOTALS				83,901.90	30,000.00	54.41

*The items with reference to each issue of bonds or stocks acquired at public offerings may be totaled in one line and the word "various" inserted in columns (2) and (3).

SCHEDULE D—Part 4

Bonds, preferred stocks and common stocks to be grouped separately showing sub-totals for each group.

Showing all Bonds and Stocks SOLD, REDEEMED *or Otherwise* DISPOSED OF *During the Current Year*

(1) DESCRIPTION Give complete and accurate description of each bond and stock, including location of all street railway, bank, trust and miscellaneous companies. If bonds are serial issues give amounts maturing each year. Companies may at their option summarize all bonds of the same issue called, matured or redeemed during the year and omit dates under column (2).	(2) Date Sold	(3) NAME OF PURCHASER (If matured or called under redemption option, so state and give price at which called.)	(4) No. of Shares of Stock	(5) Consideration (Excluding Accrued Interest on Bonds)	(6) Par Value of Bonds	(7) Cost to Company (excluding accrued interest on bonds)	(8) Book Value at Date of Sale	(9) Increase, by Adjustment, in Book Value During Year	(10) Decrease, by Adjustment, in Book Value During Year	(11) Profit on Sale	(12) Loss on Sale	(13) Interest on Bonds Received During Year (Including Accrued Interest on Bonds Sold)	(14) Dividends on S... Received Du... Year (Inclu... Accrued Divi... on Stocks Su...
BONDS													
U. S. Treasury Bills due 10-17-1963	10-18	Matured		9,921.24	10,000.00	9,921.24	9,921.24					76.76	
COMMON STOCKS													
Commonwealth Edison Company	12-9	The Company (Cash for fractional interest)		7.06		7.06	7.06						
Morgan Guaranty Trust Company of New York	3-29	The Company (Cash for fractional interest)		60.50		60.50	60.50						
Dow Chemical Company	6-7	The Company (Cash for fractional interest)		13.19		13.19	13.19						
				80.75		80.75	80.75						
		Totals		10,001.99	10,000.00	10,001.99	10,001.99					76.76	

SCHEDULE E

Showing all Banks and Trust Companies in which an account was maintained at any time during the year.

NONE

SCHEDULE F

Showing all claims for death losses and all other policy Claims resisted or compromised during the year, and all claims for death losses and all other policy claims resisted December 31 of current year

NONE

SCHEDULE H

Accident and Health Exhibit

NONE

SCHEDULE O—Part 1

Accident and Health Losses

NONE

SCHEDULE O—Part 2

Development of Incurred Losses
Non-Cancellable Accident and Health Insurance

NONE

SCHEDULE S — Part 1

Showing Names and Locations of Companies and Amounts Recoverable for all Reinsurance on Paid and Unpaid Losses

NONE

SCHEDULE S — Part 2

Showing Accident and Health Reinsurance Premiums Ceded as of December 31, Current Year

NONE

SCHEDULE S—Part 3

Showing Data on ALL Life Insurance and Related Benefits Reinsured

NONE

SCHEDULE X—UNLISTED ASSETS

NONE

Form 1-S

ANNUAL STATEMENT FOR THE YEAR 1963
OF THE SEPARATE ACCOUNT BUSINESS

35

OF THE UNITED BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

SCHEDULE T—PREMIUMS AND ANNUITY CONSIDERATIONS FOR SEPARATE ACCOUNT BUSINESS

Allocated by States and Territories

STATES, ETC (1)	DIRECT BUSINESS ONLY: Life Insurance Premiums (2)	Annuity Considerations (3)	Accident and Health Insurance Premiums, Including Policy, Membership and Other Fees (4)
Alabama			
Alaska			
Arizona			
Arkansas			
California			
Colorado		1,825.00	
Connecticut			
Delaware			
Dist. Columbia			
Florida			
Georgia			
Hawaii		1,800.00	
Idaho			
Illinois			
Indiana			
Iowa			
Kansas			
Kentucky			
Louisiana			
Maine			
Maryland			
Massachusetts			
Michigan			
Minnesota			
Mississippi			
Missouri			
Montana		300.00	
Nebraska		91,230.00	
Nevada			
New Hampshire			
New Jersey			
New Mexico			
New York			
North Carolina			
North Dakota			
Ohio			
Oklahoma			
Oregon			
Pennsylvania			
Rhode Island			
South Carolina			
South Dakota			
Tennessee			
Texas			
TOTALS (forward)		95,155.00	

STATES, ETC. (1)	DIRECT BUSINESS ONLY: Life Insurance Premiums (2)	Annuity Considerations (3)	Accident and Health Insurance Premiums, Including Policy, Membership and Other Fees (4)
TOTALS (forward)		95,155.00	
Utah			
Vermont			
Virginia			
Washington			
West Virginia			
Wisconsin			
Wyoming			
Canada			
Cuba			
Puerto Rico			
Philippine Is.			
Mexico			
Other foreign			
†Dividends applied to purchase paid-up additions and annuities		0	
†Dividends applied to shorten endowment or premium-paying period		0	
Premium or annuity Considerations waived under disability or other contract provisions		0	
Total (Direct Business)		95,155.00	
Plus Reinsurance Assumed		0	
Total (All Business)		95,155.00	
Less Reinsurance Ceded		0	
*TOTAL (All Business) less Reinsurance ceded		95,155.00	

Explanation of basis of allocation by states, etc., of premiums and annuity considerations

Considerations allocated by state where effectuated.

†Dividends applied to pay renewal premiums and consideration for annuities must be included in columns (2) and (3) respectively and distributed by states.
*The sum of columns (2) and (3) should balance with Exhibit 1, Lines 6, 10 and 16, Col. 1, less Cols. 9 and 10.
Column (4) should balance with Exhibit 1, Lines 6, 10 and 16, Cols. 9 and 10, or with Schedule H, Line 7; indicate which

ANNUAL STATEMENT FOR THE YEAR 1963
OF THE SEPARATE ACCOUNT BUSINESS

OF THE PILGRIM BENEFIT LIFE INSURANCE COMPANY
(Write or stamp name of Company)

SEPARATE ACCOUNT BUSINESS IN THE STATE OF DURING THE YEAR

LIFE INSURANCE (Total)

DIRECT PREMIUMS AND ANNUITY CONSIDERATIONS (Per Schedule T)	ORDINARY	GROUP	INDUSTRIAL	TOTAL
1. Life Insurance				
2. Annuity considerations				
3.				
4. Totals				
CLAIMS AND BENEFITS PAID				
5. Death benefits				
6. Matured endowments				
7. Annuity benefits				
8.				
9. All other benefits, except Accident and Health				
10. Totals				
DIVIDENDS PAID OR CREDITED				
11. Life insurance:				
a. Paid in cash or left on deposit	NONE			
b. Other dividends applied or credited				
c. Totals				

*If breakdown is not available, report on line provided for totals

POLICY EXHIBIT (To be prepared on same basis as Exhibit of Policies on Page 15)	ORDINARY		GROUP		INDUSTRIAL	
	NUMBER	AMOUNT	NUMBER OF POLICIES	AMOUNT	NUMBER	AMOUNT
12. In force December 31 of previous year						
13. Issued during year						
14. Ceased to be in force during year (Net)						
15. In force December 31 of current year						
LOSSES AND CLAIMS						
16. Unpaid December 31, previous year	NONE					
17. Incurred during current year						
18. Settled during current year:						
a. By payment in full						
b. By compromise						
c. By rejection						
d. Totals						
19. Unpaid Dec. 31, current year (16+17−18d)						
20. Amount actually paid on compromised claims						

ACCIDENT AND HEALTH INSURANCE (TOTAL)

	DIRECT PREMIUMS (Per Schedule T)	DIRECT PREMIUMS EARNED	DIVIDENDS PAID OR CREDITED ON DIRECT BUSINESS	DIRECT LOSSES PAID	DIRECT LOSSES INCURRED
21. Group Policies					
22. Individual Policies:					
a. Accident only		NONE			
b. Accident and Health					
c. Non-cancellable A & H					
d. Hospital and Medical					
e.					
f. Total Individual					
23. Totals (Lines 21 + 22f)					

CREDIT LIFE AND ACCIDENT AND HEALTH INSURANCE

(Included in the above schedules)

Submission of data required below may be deferred to April 1st

	DIRECT PREMIUMS (Schedule T Basis)	DIRECT PREMIUMS EARNED	DIVIDENDS PAID OR CREDITED ON DIRECT BUSINESS	DIRECT LOSSES PAID	DIRECT LOSSES INCURRED
24. Individual Life Policies					
25. Group Life Policies		NONE			
26. Totals (Lines 24 + 25)					
27. Individual A & H Policies					
28. Group A & H Policies					
29. Totals (Lines 27 + 28)					
30. Totals (Lines 26 + 29)					

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03

PLAINTIFF'S EXHIBIT NO. 15

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.

STATEMENT OF POLICY

(As amended November 5, 1957)

The Securities and Exchange Commission with the assistance of the National Association of Securities Dealers, Inc., in 1950 reviewed samples of advertising and supplemental sales literature used in the sale of investment company shares, much of which was not filed with this Commission. This review revealed the existence of many practices in connection with the use, form and content of certain advertising and sales literature which, in the opinion of the Commission, might violate statutory standards, including provisions of the Securities Act of 1933 and the Investment Company Act of 1940.

The Commission, therefore, has issued the following Statement of Policy so that issuers, underwriters and dealers may understand certain of the types of advertising and sales literature which the Commission considers may be violative of the statutory standards.

It should be emphasized that the following Statement of Policy, as amended, does not attempt to cover all possible abuses, and that literature which complies with this Statement may not be used if it is in fact misleading. Conversely, nothing in this Statement of Policy is intended to prevent the use of factual statements, fairly presented, concerning fundamental investment policies and objectives, investment restrictions or other characteristics of a particular investment company.

"Sales literature" as used hereafter shall be deemed to include any communication (whether in writing, by radio or by television) used by an issuer, underwriter, or dealer to induce the purchase of shares of an investment company. Reports of issuers to the extent they are transmitted to shareholders and do not contain an express offer are not deemed to be "sales literature" within the meaning of this definition but shall conform to this Statement of Policy. Communications between issuers, underwriters and dealers are included in this definition of "sales literature" only if such communications are passed on either orally or in writing or are shown to prospective investors or are designed to be employed in either written or oral form in the sale of securities.

For the purpose of interpreting this Statement of Policy, a piece of sales literature shall be deemed materially misleading by reason of an implication, as contemplated herein, if such sales literature (1) includes an untrue statement of a material fact or (2) omits to state a material fact necessary in order to make a statement made, in the light of the circumstances of its use, not misleading.

not reflect the acceptance of capital gains distributions in shares or the rein-

It will be considered materially misleading hereafter for sales literature —

Rates of Return

(a) To represent or imply a percentage return on an investment in the shares of an investment company unless based upon—

(1) Dividends from net investment income paid during a fiscal year related to the average monthly offering price for such fiscal year, provided that if any year prior to the most recent fiscal year is selected for this purpose, the rate of return for all subsequent fiscal years, similarly calculated, shall also be stated; or

(2) Dividends paid from net investment income during the twelve months ending not earlier than the close of the calendar month immediately preceding the date of publication related to an offering price current at said date of publication;

in either case the basis of the calculation shall be shown and adjustment made for capital gains distributions and any other factor necessary to make the presentation not misleading. "Net investment income" as used above shall include net accrued undivided earnings included in the price of capital shares issued and repurchased and shall be as required to be included in the issuer's prospectus. Every such statement of return shall be accompanied by a statement to the effect that such return is based upon dividends paid in the period covered and is not a representation of future results. Either in the same text, or by reference in the same text to an historical table elsewhere in the same piece of literature, there must be shown the per-share asset value at the beginning and end of the period, or the increase or decrease (stated in percentage) in asset value.

Show Asset Value Change

Capital vs. Income

(b) (1) To combine into any one amount distributions from net investment income and distributions from any other source.

(b) (2) To represent or imply an assurance that an investor will receive a stable, continuous, dependable, or liberal return or that he will receive any specified rate or rates of return.

Explain Risks

(c) To represent or imply an assurance that an investor's capital will increase or that purchase of investment company shares involves a preservation of original capital and a protection against loss in value. To discuss accumulation of capital, preservation of capital, accumulation of an estate, protection against loss of purchasing power, diversification of investments, financial independence or profit possibilities without pointing out or explaining the market risks inherently involved in the investment.

Government Regulation

(d) To make any reference to registration or regulation of any investment company under Federal or state authority without explaining that this does not involve supervision of management or investment practices or policies.

(e) To represent or imply that services of banking institutions as custodian of securities, transfer agent, or dividend disbursing agent, provide protection for investors against possible depreciation of assets or that such institutions maintain any supervisory function over management in such matters as purchase and sale of portfolio securities or payment of dividends or provide any trusteeship protection, or to fail to state the extent of the limited role of the custodian whenever the advantages of custodial services are discussed. *Custodial Services*

(f) To state or discuss the redemption features of investment company shares without explaining in such statement that the value of the shares on redemption may be more or less than the investor's cost, depending upon the market value of the portfolio securities at the time of redemption. *Redemption*

(g) (1) To represent or imply that shares of an investment company are similar to or as safe as government bonds, insurance annuities, savings accounts or life insurance, or have the fixed income, principal, or any other features of a debt security. *Comparisons Generally*

(2) To represent or imply that the management of an investment company is under the same type of investment restrictions or is operated under limitations similar to or has fiduciary obligations such as those imposed by governmental authorities on savings banks and insurance companies, except to the extent that it is so restricted or limited by its statement of policy on file with this Commission.

(h) To use any comparison of an investment company security with any other security or medium of investment or any security index or average without pointing out—— *Comparisons With Market Index or Other Security*

(1) that the particular security or index or average and period were selected; and,

(2) that the results disclosed should be considered in the light of the company's investment policy and objectives, the characteristics and quality of the company's investments, and the period selected; and,

(3) the material differences or similarities between the subjects of the comparisons; and,

(4) what the comparison is designed to show; and

(5) anything else that may be necessary to make the comparison fair.

(i) To represent or imply that investment companies in general are direct sources of new capital to industry or that a particular investment company is such a source unless the extent to which such investments are made is disclosed. *New Capital*

Performance Charts and Tables

(j) To use any chart or table which is inaccurate in factual detail or tends to create a false or misleading impression as to any material aspect of the investment company's past performance or of an assumed investment of any investor in the investment company, or appears to represent that the investment company's past performance or investor experience will be repeated in the future. Charts or tables which conform to the "Approved Charts and Tables," described below and illustrated in the Appendix, will not be regarded by the Commission as materially false and misleading in the absence of facts or circumstances which make such charts or tables or their use in fact false and misleading in a particular use. Persons using other charts and tables must assume responsibility that they are not materially false or misleading. Any such chart or table may be submitted to the Commission for its views in advance of its use.

(1) Approved charts should conform with the following:

(i) The text, graphic detail and arrangement of any such chart should be substantially as shown on sample charts A, B, C, and D in the Appendix, whichever is applicable.

Drawn to Scale

(ii) Each chart should be drawn to scale which should be shown on the side of the chart and the same scale should be used for all segments of the chart. Appropriate shading or coloring should be added to distinguish between the different elements of the chart.

(iii) Charts A and B may not be used to show the reinvestment of dividend income.

(iv) The caption of sample chart B may, if desired, be changed to read as follows:

RECORD OF FUND IN TERMS OF NET ASSET VALUE PER SHARE, AND ILLUSTRATION OF AN ASSUMED INVESTMENT IN ONE SHARE WITH CAPITAL GAINS DISTRIBUTIONS ACCEPTED IN ADDITIONAL SHARES

(v) Chart C should be accompanied in the same piece of literature by Table 1 and Chart D should be so accompanied by Table 2. These tables should be prepared on the same assumption and cover the same period as the related chart, and should appear in a manner and location which permit easy reference from the chart to the corresponding table.

(2) Approved tables should conform with the following:

(i) The text, detail and arrangement of any table illustrating a dividend reinvestment or continuous investment program should be substantially as shown on Tables 1 and 2 in the Appendix, whichever is applicable. Tables prepared in accordance with the requirements for a table prescribed for use in the investment company's prospectus, or tables containing the same information as is shown on Charts A and B, may also be employed.

See Sample Tables 1 and 2 . . . Pages 14 *and* 15

Contractual Plans

(ii) Any table designed to show any other investment program should contain comparable information. *(Contractual plan companies must use Sample Tables 3 and 4 on Pages* 18 *and* 19*)*

(iii) When Table 1 is used with Chart C or when Table 2 is used with Chart D in accordance with subparagraph (1) (v), above, such table need not contain any specific reference to the sales commission. When such table follows immediately after the chart, on the same page as the chart, the caption of the table and any notes thereto which are contained in the chart may be omitted from the table.

(3) Approved charts and tables should conform with the following:

Highest Sales Charge

(i) Charts and tables may be set up on a per share basis, or in amounts other than those shown on the attached samples, provided the charts and tables give effect to the maximum sales commission currently charged. The amounts used in constructing the chart or table should be amounts capable of being invested under the particular program being described. Any chart or table may be accompanied, in the same piece of literature, by a chart or table (which may be in summary form) illustrating investments in larger amounts at reduced sales commissions.

(ii) Any chart or table which reflects either the acceptance of capital gains distributions in additional shares or the reinvestment of dividends from investment income should not be captioned or characterized as the record of the fund, except as permitted in subparagraph (1) (iv).

Periods Covered

(iii) The period covered by such chart or table should be the most recent period ending with the latest available fiscal or calendar year and embracing:

A. The life of the company or the life of the issuer of the underlying investment company shares, or,

B. The duration of any plan or contract of the type referred to in Section 27 (a) of the Investment Company Act of 1940, or,

C. The immediately preceding 10 years, or,

D. Periods longer than 10 years but less than the life of the company or the duration of such plan or contract, if such additional periods are multiples of five years;

provided that a portion of the current year may be added to the period ended with the last fiscal or calendar year. In no event should such chart or table relate to a period that exceeds the life of the company or the life of the issuer of the underlying shares.

Summary Results

(iv) Charts A, B, C, and D and Tables 1 and 2 may be accompanied in the same piece of literature by summary tables for the same period covered by the chart or table showing the end results which would have been obtained if alternative assumptions had been made as to the acceptance of capital gains distributions in shares or the reinvestment of dividends from investment income or both.

Use Same Basis

(v) Charts and tables may be accompanied in the same piece of literature by summary tables prepared on the same basis as the chart or table they accompany as follows:

A. A summary table showing the end results depicted in the chart or table.

Successive Summaries

B. Successive summary tables showing the end results over several periods of equal length, provided that the latest 10-year or longer period as well as every other such period within the total time span covered by the chart or table is included and that the chart or table and the summary tables are presented on the same page or on facing pages.

C. Successive summary tables showing the end results over several periods of unequal length, provided that such unequal periods start with each successive year and end with the last date shown on the chart or table, that every such period of unequal length within the total time span covered by the chart or table is included, and that the chart or table and the summary tables are presented on the same page or on facing pages.

Summary Content

(vi) In depicting the end results in any summary or successive summary tables provided for in (iv) and (v) above, the total of initial and periodic investments, total dividend reinvestment cost, total investment cost, total of capital gains distributions accepted in shares, and ending total asset value shall be shown separately to the extent applicable. The total capital gains distributions accepted in shares may be shown in a footnote. Summary tables need not contain any specific reference to sales commission.

(vii) Any approved chart or table may be prepared on a basis which does

not reflect the acceptance of capital gains distributions in shares or the reinvestment of dividends from investment income, or both, provided that no chart or table should reflect the reinvestment of dividends from investment income unless it also reflects the acceptance of capital gains distributions in shares.

May Need Added Facts

(viii) Any chart or table should be preceded or accompanied by a prominent statement of any additional information or explanation of material significance to investors in appraising the figures shown, when necessary in a particular case to provide adequate and accurate disclosure of material facts.

(ix) Other relevant data in addition to that shown on the Approved Charts or Tables, such as the number of shares of stock acquired through assumed investments or the price of the shares so acquired, may be included, if the addition of such data does not result in a false and misleading presentation.

(k) To make any extravagant claims regarding management ability or competency.

Management Claims

(l) To represent or imply that investment companies are operated as, or are similar to, "co-operatives".

(m) To represent or imply that investment company shares generally have been selected by fiduciaries.

(n) (1) To use the phrase "dollar averaging" or "averaging the dollar" (although the phrases "dollar cost averaging" or "cost averaging" are not objectionable) in referring to any plan of continuous investment in the shares of an investment company at stated intervals regardless of the price level of the shares.

Continuous Investment Programs

(2) To discuss or portray the principles of dollar cost averaging, or cost averaging, or to discuss or portray any Periodic Payment Plan referred to in section 27(a) of the Investment Company Act of 1940, without making clear—

Cost Averaging and Contractual Plans

(i) that the investor will incur a loss under such plan if he discontinues the plan when the market value of his accumulated shares is less than his cost; and

(ii) that the investor is investing his funds primarily in securities subject to market fluctuations and that the method involves continuous investment in such shares at regular intervals regardless of price levels; and

(iii) that the investor must take into account his financial ability to continue such plan through periods of low price levels; and

(iv) that such plans do not protect against loss in value in declining markets.

(3) To discuss or portray any other type of continuous investment plan without making clear that such type of investment plan does not assure a profit and does not protect against depreciation in declining markets.

Sales Commissions

(o) To fail to include in any sales literature which does not state the amount or rate of the sales commission (except communications which deal only with routine business matters or which do not purport to discuss or describe any investment company or investment company security) a clear reference to the prospectus or prospectuses for information concerning the sales commission, and other information.

(p) To fail to include in any sales literature which is designed to encourage investors to switch from one investment company to another, or from one class of security of an investment company to another class, the substance of the following statement in a separate paragraph in type as large as that used generally in the body of the piece:

> **"Switching from the securities of one investment company to another, or from one class of security of an investment company to another, involves a sales charge on each such transaction, for details of which see the prospectus. The prospective purchaser should measure these costs against the claimed advantage of the switch".**

Industry Performance against Company Performance

(q) To represent or imply that the performance of any particular company may be measured by or compared with or related to the performance of a particular industry unless the extent and scope of the portfolio of the particular company is such that its performance will generally approximate that of the industry.

Reprints

(r) To employ material in whole or in part from published articles or documents descriptive of or relating to investment companies unless such material, or the literature including such material, complies with this Statement of Policy and in addition such material is not taken out of context in a manner which alters its intended meaning.

SAMPLE PERFORMANCE CHARTS AND TABLES

Sample Chart A

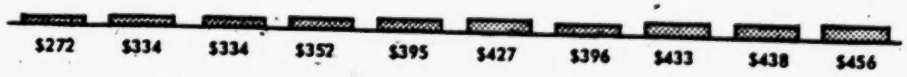
ILLUSTRATION OF AN ASSUMED INVESTMENT OF $10,000

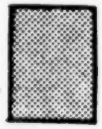
With Capital Gains Distributions Accepted in Additional Shares

The chart below covers the period from January 1, 1946 to December 31, 1955. This period was one of generally rising common stock prices. The results shown should not be considered as a representation of the dividend income or capital gain or loss which may be realized from an investment made in the fund today.

RECORD OF INCOME

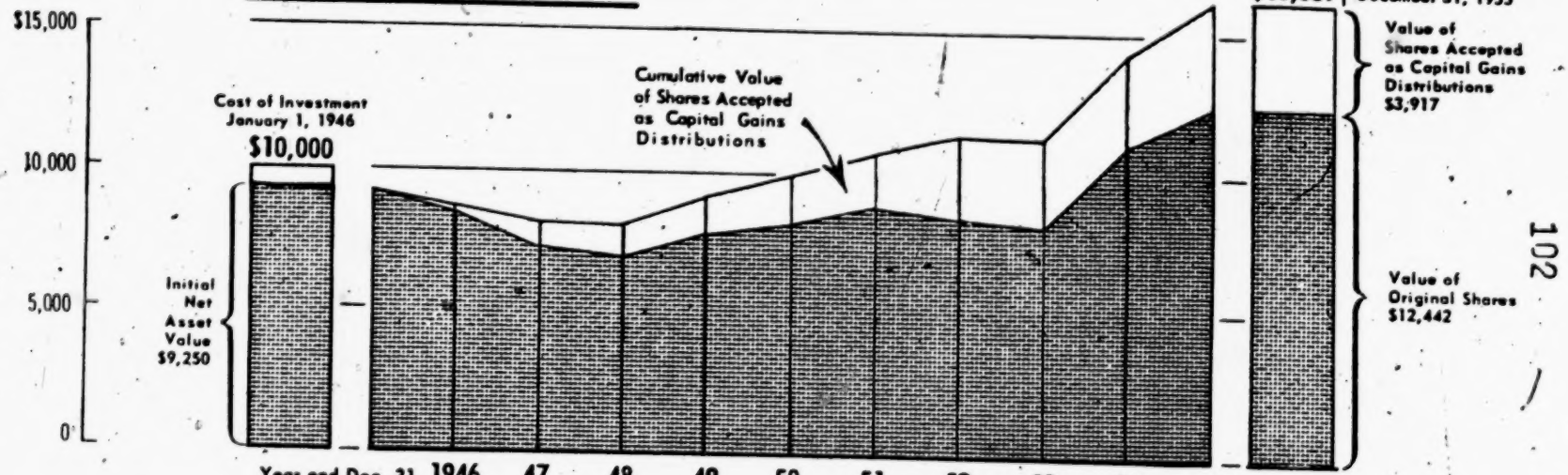
Dividends Paid from Investment Income





Total Dividends from Investment Income
$3,837

RECORD OF PRINCIPAL



Year end Dec. 31	1946	47	48	49	50	51	52	53	54	55
VALUE OF SHARES initially acquired through investment of $10,000	$8,425	$7,260	$6,925	$7,845	$8,270	$8,765	$8,405	$8,220	$11,110	$12,442
VALUE OF SHARES accepted as capital gains distributions (cumulative)	349	905	1,175	1,354	1,521	1,860	2,840	2,888	3,253	3,917
TOTAL VALUE	8,774	8,165	8,100	9,199	9,791	10,625	11,245	11,108	14,363	16,359

Initial net asset value is the amount received by the fund after deducting from the cost of the investment the sales commission as described in the prospectus.

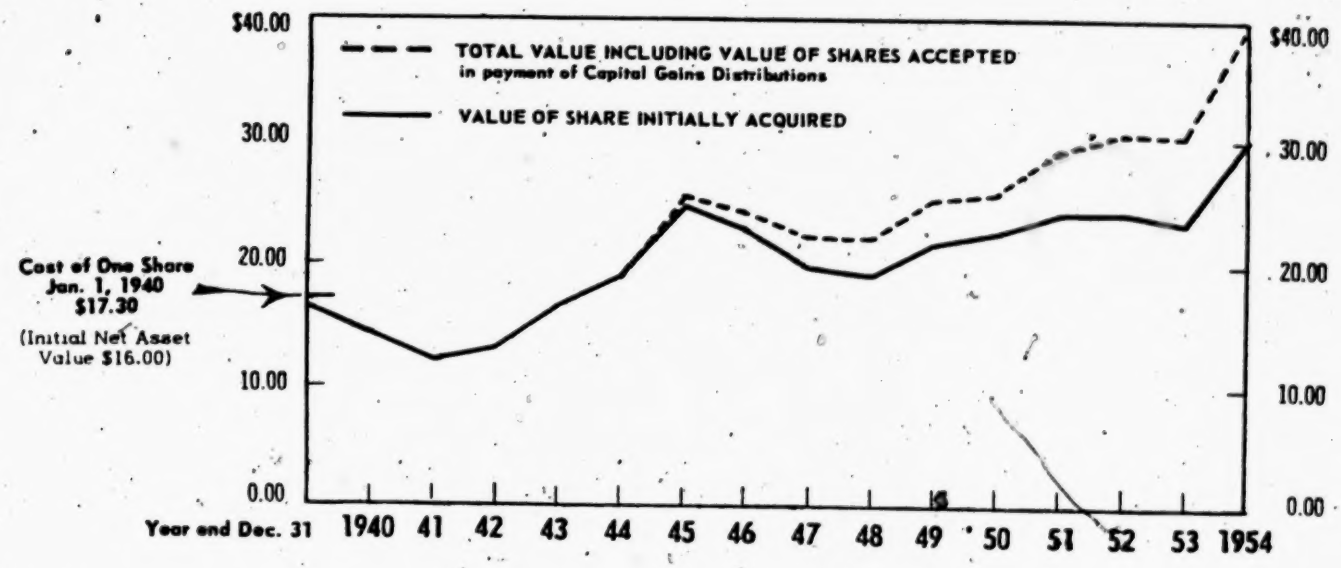
No adjustment has been made for any income taxes payable by stockholders on capital gains distributions accepted in shares. The dollar amounts of capital gains distributions accepted in shares were: 1946 - $334, 1947 - $578, 1948 - $207, 1949 - none, 1950 - $127, 1951 - $215, 1952 - $594, 1953 - $163, 1954 - $128, 1955 - $315; Total $2,661.

Sample Chart B

ILLUSTRATION OF AN ASSUMED INVESTMENT IN ONE SHARE

with Capital Gains Distributions Accepted in Additional Shares

The chart below covers the period from January 1, 1940 to December 31, 1954. This period was one of generally rising common stock prices. The results shown should not be considered as a representation of the dividend income or capital gain or loss which may be realized from an investment made in the fund today.



Per share for year ending Dec. 31	'40	'41	'42	'43	'44	'45	'46	'47	'48	'49	'50	'51	'52	'53	'54	
VALUE OF SHARE initially acquired	$14.04	$12.18	$13.38	$16.40	$18.94	$24.89	$22.78	$19.75	$19.08	$21.67	$22.74	$24.15	$24.15	$23.50	$30.05	
VALUE OF SHARES accepted as capital gains distributions (cumulative)	—	—	—	—	—	.42	1.23	2.59	3.09	3.51	4.07	4.95	6.64	6.91	9.29	
TOTAL VALUE	$14.04	12.18	13.38	16.40	18.94	25.31	24.01	22.34	22.17	25.18	26.81	29.10	30.79	30.41	39.34	
DIVIDENDS FROM INCOME	.64	.69	.76	.64	.64	.71	.75	.91	.91	.96	1.08	1.17	1.08	1.18	1.20	Total 13.32

Initial net asset value is the amount received by the fund after deducting from the cost of the investment the sales commission as described in the prospectus.

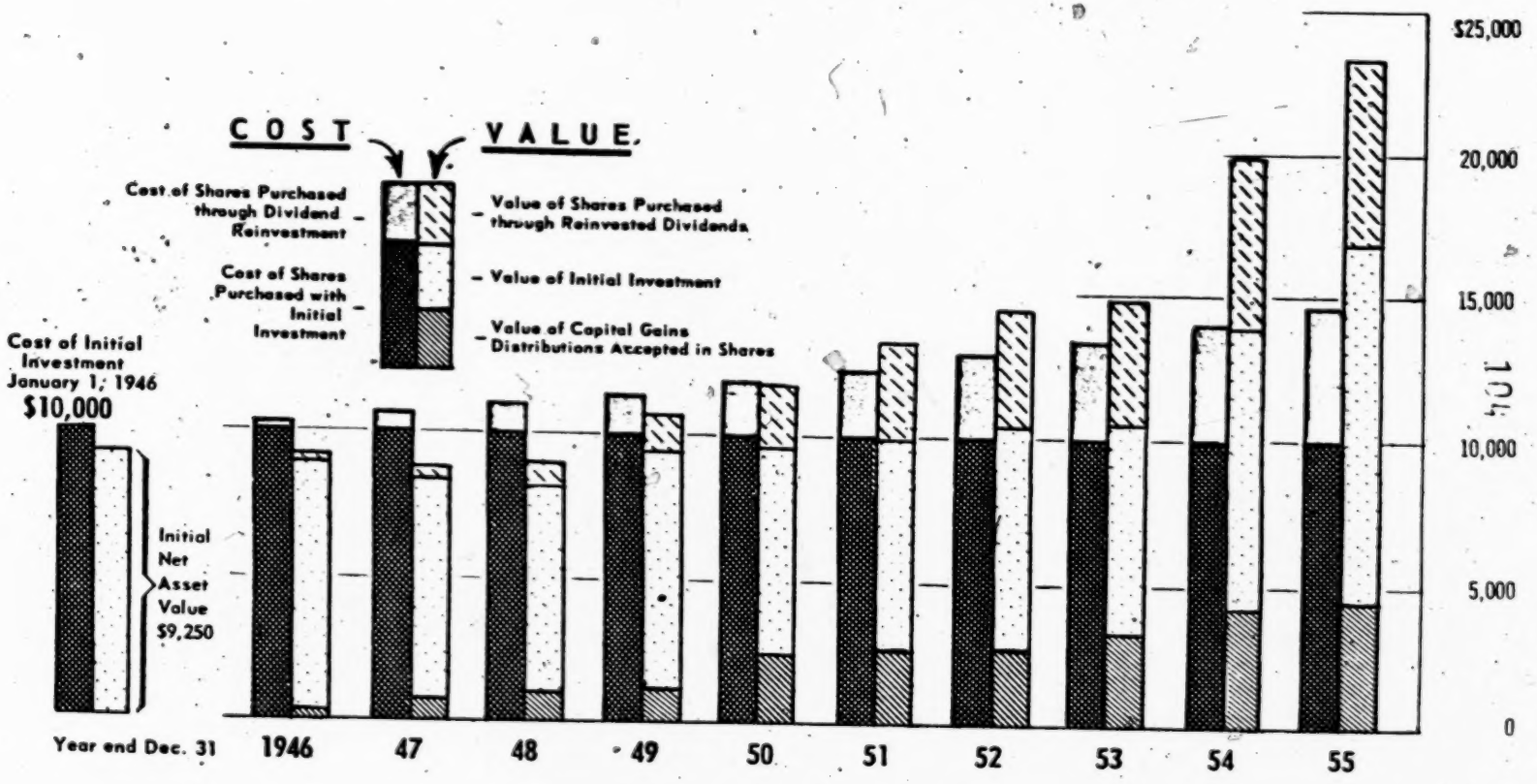
No adjustment has been made for any income taxes payable by stockholders on capital gains distributions accepted in shares. The dollar amounts of capital gains distributions accepted in shares were: 1940-1944 - none; 1945 - $0.34; 1946 - $0.92; 1947 - $2.58; 1948 - $0.57; 1949 - none; 1950 - $0.35, 1951 - $0.59; 1952 - $1.63; 1953 - $0.45; 1954 - $0.35. Total - $7.78.

Sample Chart C

ILLUSTRATION OF AN ASSUMED INVESTMENT OF $10,000

with Dividends Reinvested and Capital Gains Distributions Accepted in Shares

The chart below covers the period from January 1, 1946 to December 31, 1955. This period was one of generally rising common stock prices. The results shown should not be considered as a representation of the dividend income or capital gain or loss which may be realized from an investment made in the fund today.



Initial net asset value is the amount received by the fund after deducting from the cost of the investment the sales commission as described in the prospectus. Income dividends were assumed to have been reinvested in additional shares at the public offering price which includes a sales commission of 7 1/2%, as described in the prospectus.

No adjustment has been made for any income taxes payable by shareholders on capital gains distributions and dividends reinvested in shares.

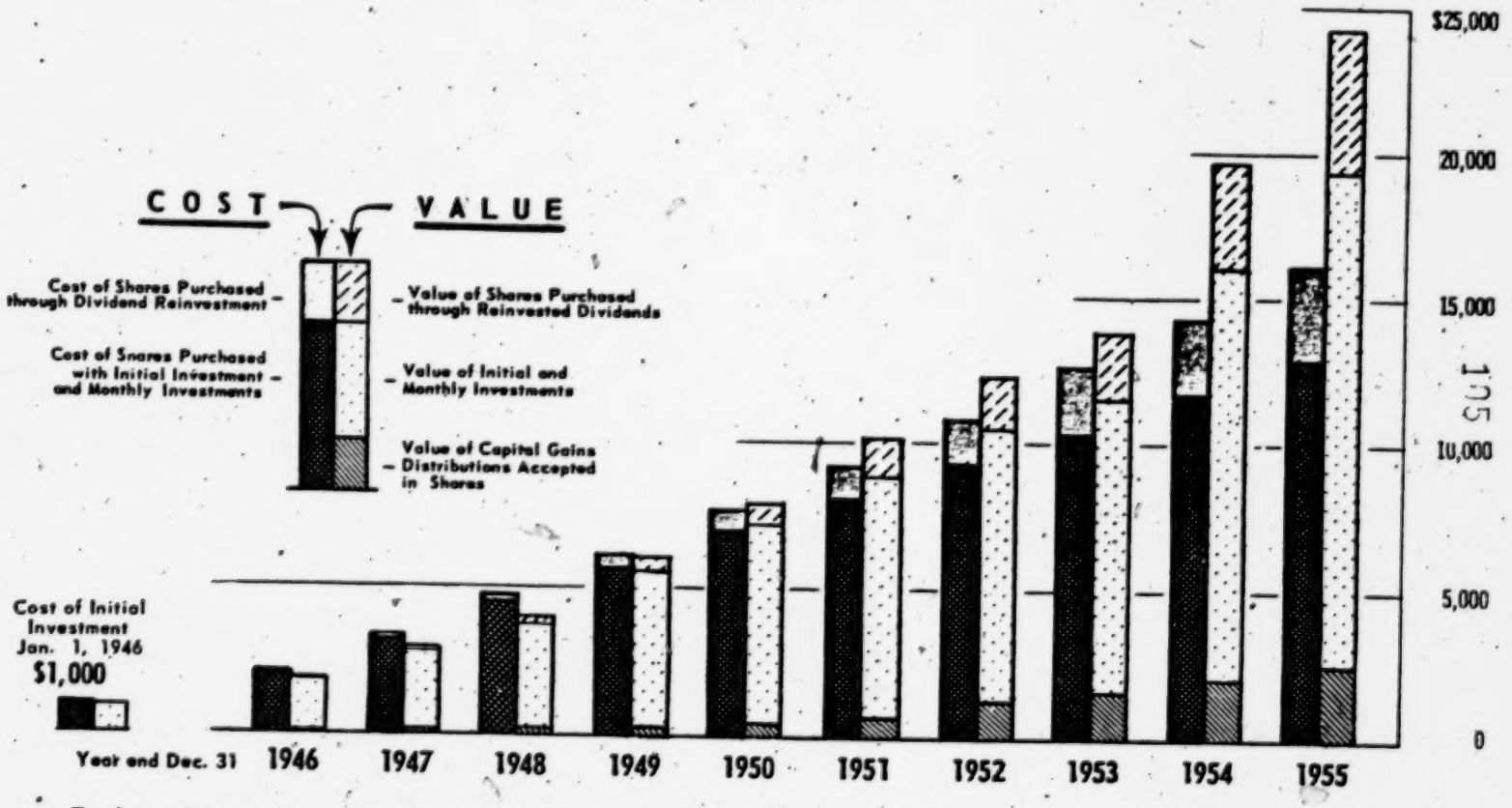
NOTE: See table ___ on page ___ for dollar amounts represented by this chart

Sample Chart D

ILLUSTRATION OF A CONTINUOUS INVESTMENT PROGRAM

in terms of an Assumed Initial Investment of $1,000 and Subsequent Investments of $100 Per Month with Dividends Reinvested and Capital Gains Distributions Accepted in Shares

The chart below covers the period from January 1, 1946 to December 31, 1955. This period was one of generally rising common stock prices. The results shown should not be considered as a representation of the dividend income or capital gain or loss which may be realized from an investment made in the fund today. A program of the type illustrated does not assure a profit or protect against depreciation in declining markets.



Total cost for each year represents the initial investment of $1,000 plus the cumulative total of monthly investments of $100 per month plus the cumulative amount of income dividends reinvested. The cost for all shares so purchased includes sales commissions of 7 1/2% as described in the prospectus.

No adjustment has been made for any income taxes payable by shareholders on capital gains distributions and dividends reinvested in shares.

NOTE: See table____ on page____ for dollar amounts represented by this chart

Sample Table 1

ILLUSTRATION OF AN ASSUMED INVESTMENT OF $10,000

with Dividends Reinvested and Capital Gains Distributions Accepted in Shares

The table below covers the period from January 1, 1946 to December 31, 1955. This period was one of generally rising common stock prices. The results shown should not be considered as a representation of the dividend income or capital gain or loss which may be realized from an investment made in the fund today.

Year Ended Dec. 31 -	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955
AMOUNT OF DIVIDENDS FROM INVESTMENT INCOME REINVESTED ANNUALLY	$ 275	$ 349	$ 361	$ 397	$ 463	$ 791	$ 227	$ 565	$ 594	$ 637
CUMULATIVE COST OF SHARES PURCHASED THROUGH INVESTMENT OF INCOME DIVIDENDS	275	624	985	1,382	1,845	2,636	2,863	3,428	4,022	4,659
TOTAL COST, INCLUDING REINVESTED DIVIDENDS	$10,275	$10,624	$10,985	$11,382	$11,845	$12,636	$12,863	$13,428	$14,022	$14,659
VALUE OF SHARES:										
a. Initially Acquired	$ 8,434	$ 7,268	$ 6,962	$ 8,120	$ 7,240	$ 7,189	$ 7,699	$ 7,391	$ 9,871	$11,473
b. Accepted as Capital Gains Distributions (cumulative)	320	860	1,090	1,120	2,400	2,600	2,890	3,220	4,170	4,350
SUB-TOTAL	$ 8,754	$ 8,128	$ 8,052	$ 9,240	$ 9,640	$ 9,789	$10,589	$10,611	$14,041	$15,823
c. Purchased Through Reinvestment of Income (cumulative)	$ 260	$ 580	$ 925	$ 1,370	$ 2,100	$ 3,450	$ 3,910	$ 4,250	$ 5,800	$ 7,400
TOTAL VALUE	$ 9,014	$ 8,708	$ 8,977	$10,610	$11,740	$13,239	$14,499	$14,861	$19,841	$23,223

The total cost figure represents the initial cost of $10,000 plus the cumulative amount of income dividends reinvested, and includes sales commissions of 7 1/2%, as described in the prospectus, on all shares so purchased. The dollar amounts of capital gains distributions accepted in shares were: 1946 - $334, 1947 - $594; 1948 - $220; 1949 - none; 1950 - $1,148; 1951 - $147; 1952 - $258; 1953 - $210; 1954 - $171, 1955 - $436, Total - $3,518.

No adjustment has been made for any income taxes payable by shareholders on capital gains distributions and dividends reinvested in shares.

Sample Table 2

ILLUSTRATION OF A CONTINUOUS INVESTMENT PROGRAM

in terms of an Assumed Initial Investment of $1,000 and Subsequent Investments of $100 Per Month with Dividends Reinvested and Capital Gains Distributions Accepted in Shares

The table below covers the period from January 1, 1946 to December 31, 1955. This period was one of generally rising common stock prices. The results shown should not be considered as a representation of the dividend income or capital gain or loss which may be realized from an investment made in the fund today. A program of the type illustrated does not assure a profit or protect against depreciation in declining markets.

Year Ended Dec. 31 -	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955
AMOUNT OF DIVIDENDS FROM INVESTMENT INCOME REINVESTED ANNUALLY	$ 38	$ 89	$ 139	$ 201	$ 286	$ 372	$ 403	$ 501	$ 572	$ 649
CUMULATIVE COST OF SHARES PURCHASED THROUGH INVESTMENT OF INCOME DIVIDENDS	$ 38	$ 127	$ 266	$ 467	$ 753	$ 1,125	$ 1,528	$ 2,029	$ 2,601	$ 3,250
TOTAL OF INITIAL AND MONTHLY INVESTMENTS	2,100	3,300	4,500	5,700	6,900	8,100	9,300	10,500	11,700	12,900
TOTAL COST, INCLUDING REINVESTED DIVIDENDS	$ 2,138	$ 3,427	$ 4,766	$ 6,167	$ 7,653	$ 9,225	$10,828	$12,529	$14,301	$16,150
VALUE OF SHARES:										
a. Acquired Through Initial and Monthly Investments	$ 1,816	$ 2,659	$ 3,706	$ 5,506	$ 6,863	$ 8,404	$ 9,432	$10,113	$14,237	$15,941
b. Accepted as Capital Gains Distributions (cumulative)	25	147	198	218	340	548	1,152	1,430	2,005	2,592
SUB-TOTAL	$ 1,841	$ 2,806	$ 3,904	$ 5,724	$ 7,203	$ 8,952	$10,584	$11,543	$16,242	$18,533
c. Purchased Through Reinvestment of Income (cumulative)	30	108	225	425	790	1,237	1,753	2,272	3,511	4,790
TOTAL VALUE	$ 1,871	$ 2,914	$ 4,129	$ 6,149	$ 7,993	$10,189	$12,337	$13,815	$19,753	$24,323

The total cost figures represent the initial investment of $1,000 plus the cumulative total of monthly investments of $100 per month plus the cumulative amount of income dividends reinvested, and include sales commissions on all shares so purchased of 7 1/2%, as described in the prospectus. The dollar amounts of capital gains distributions accepted in shares were: 1946 - $33, 1947 - $129, 1948 - $76, 1949 - none, 1950 - $86, 1951 - $178, 1952 - $575, 1953 - $181, 1954 - $161, 1955 - $436. Total $1,853.

No adjustment has been made for any income taxes payable by shareholders on capital gains distributions and dividends reinvested in shares.

CONTRACTUAL PLAN TABLES

Under Section (j) of the Statement of Policy, hypothetical tables used by contractual plan company underwriters in supplemental sales literature must conform to Sample Tables 3 and 4 on the following pages.

Use Highest Sales Charge

These tables are prepared on the basis of an assumed investment of $10 monthly. This is to meet the requirement that such tables must be prepared on the basis of assumed investments involving the smallest permissible monthly payment and carrying the largest sales charge. Anyone wishing to do so may also include in sales literature containing tables such as these, additional tables or summaries based on larger monthly payments and carrying smaller sales charges; but no such additional tables or summaries may be used except when published in the same literature that contains tables on the basis of the largest sales charge.

Summary Option

The sample tables contain summary results. Such summaries are not required. They are included in the samples simply to make clear that, at the minimum, any such summaries must include at least the following: total payments, total dividends reinvested, total investment cost, total capital gains reinvested, and total liquidating value.

Where a particular type of contractual plan does not wholly fit the details of the samples, such tables may be adapted to be applicable to the particular plan being shown. However, the overall format and text of the tables must be followed as closely as possible.

Sample Table 3

ILLUSTRATION OF A TWENTY YEAR CONTRACTUAL PLAN FOR INVESTMENT IN _____

This illustration is in terms of an assumed investment of $10 per month (minimum monthly payment plan) for ten years, with dividends reinvested and capital gains distributions accepted in shares, followed by an additional ten years during which dividends from investment income and distributions from capital gains on accumulated shares continue to be received in shares.

The period covered, from January 1, 1938 to December 31, 1957, was one of generally rising common stock prices. The results shown should not be considered as a representation of the dividend income or capital gain or loss which may be realized from an investment made in the fund today. A program of the type illustrated does not assure a profit or protect against depreciation in declining markets.

ACCUMULATION PERIOD
(1st through 10th years)

Year End	Monthly Payments: Annually	Monthly Payments: Cumulative	Annual Div'd. Income Reinvested	Total Cumulative Cost (a)	Deductions: Sales Charge	Deductions: Custodian Fee	Balance Invested After Deductions: Annually	Balance Invested After Deductions: Cumulative	Annual Capital Gains Dists. Reinvested	Value of Accumulated Shares	Total Shares Accumulated
1938	*$130.00**	*$ 130.00*	*$ 1.44*	*$ 131.44*	*$ 65.00**	*$ 3.25**	*$ 61.87*	*$ 61.87*	*$ 1.08*	*$ 43.40*	*6.9*
1939	120.00	250.00	5.12	256.56	4.80	3.00	117.32	179.19	1.16	179.17	25.6
1940	120.00	370.00	6.93	383.49	4.80	3.00	119.13	298.32	9.76	320.97	44.5
1941	120.00	490.00	13.39	516.88	4.80	3.00	125.59	423.91	9.03	439.68	64.6
1942	120.00	610.00	25.38	662.76	4.80	3.00	138.08	561.99	6.74	529.49	86.3
1943	120.00	730.00	31.58	814.34	4.80	3.00	143.78	705.77	10.87	743.62	111.1
1944	120.00	850.00	38.69	973.03	4.80	3.00	150.89	856.66	23.43	1,047.76	133.4
1945	120.00	970.00	42.19	1,135.22	4.80	3.00	154.39	1,011.05	41.51	1,373.90	156.6
1946	120.00	1,090.00	43.32	1,298.54	4.80	3.00	155.62	1,166.57	84.21	1,817.35	181.5
1947	110.00	1,200.00	45.89	1,454.43	4.40	2.75	148.74	1,315.31	79.87	1,872.27	205.0
			$254.43		$107.80	$30.00			$267.66		

(a) Reflects the cumulative total of monthly payments, plus the cumulative amount of income dividends reinvested.

**Under the terms of this plan, out of the initial payment of $20, $10 is deducted as a sales charge, with $5 being deducted as a sales charge from each of the next 11 payments. Additional deductions include $.50 from the initial payment, and $.25 from each of the next 11 payments for custodian fees, with $1.32 also being deducted, from the initial payment only, for Federal issuance tax. Total deductions from the first 12 payments equal $69.57, or 53.5% of the total of the first 12 monthly payments. If all of the first 10 years' payments are made, total sales charge and other deductions amount to 11.5% of the total agreed payments.*

END OF PAYMENT PERIOD

RETAINED INVESTMENT PERIOD
(11th through 20th years—Distributions Accepted in Shares)

Year Ended	Annual Div'd. Income Reinvested	Total Cumulative Cost (b)	Deductions: Sales Charge	Deductions: Custodian Fee	Balance Invested After Deductions: Annually	Balance Invested After Deductions: Cumulative	Annual Capital Gains Dists. Reinvested	Value of Accumulated Shares	Total Shares Accumulated
1948	$ 60.53	$1,514.96	—	$ 2.40	$ 58.13	$1,373.44	$ 44.04	$1,805.1	216.9
1949	71.70	1,586.66	—	2.40	69.30	1,442.74	39.04	1,872.10	229.9
1950	91.25	1,677.91	—	2.40	88.85	1,531.59	26.19	2,178.45	243.4
1951	98.94	1,776.85	—	2.40	96.54	1,629.13	37.70	2,452.40	257.8
1952	104.91	1,881.76	—	2.40	102.51	1,730.64	66.38	2,752.56	274.9
1953	111.78	1,993.54	—	2.40	109.38	1,840.02	70.61	3,052.82	292.4
1954	118.70	2,112.24	—	2.40	116.30	1,956.32	69.27	3,107.43	311.0
1955	129.30	2,241.54	—	2.40	126.90	2,083.22	100.60	4,064.16	330.4
1956	145.51	2,387.05	—	2.40	143.11	2,226.33	148.69	4,692.64	352.5
1957	158.78	2,545.83	—	2.40	156.38	2,382.71	162.41	4,894.43	376.7
	$1,091.40			$24.00			$765.00		

(b) Based on total cumulative cost at beginning of 1948 of $1,454.53, plus income dividends reinvested for the period 1948-1957.

No allowance has been made for any income taxes payable by planholders on capital gains distributions and dividends reinvested in shares for the 20-year period.

SUMMARY

		Shares
Total Payments	$1,200.00	141
Income Dividends Reinvested	1,345.83	135
Total Investment Cost	$2,545.83	276
Capital Gains Distributions Reinvested	$1,032.00	100
Total Liquidating Value (Dec. 31, 1957)	$4,894.43	376

110 Sample Table 4

ILLUSTRATION OF A TWENTY YEAR CONTRACTUAL PLAN FOR INVESTMENT IN _____

This illustration is in terms of an assumed investment of $10 per month (minimum monthly payment plan) for ten years, with dividends reinvested and capital gains distributions accepted in shares, followed by an additional ten years during which dividends from investment income and distributions from capital gains on accumulated shares are received in cash.

The period covered, from January 1, 1938 to December 31, 1957, was one of generally rising common stock prices. The results shown should not be considered as a representation of the dividend income or capital gain or loss which may be realized from an investment made in the fund today. A program of the type illustrated does not assure a profit or protect against depreciation in declining markets.

ACCUMULATION PERIOD
(1st through 10th years)

Year End	MONTHLY PAYMENTS Annually	MONTHLY PAYMENTS Cumulative	Annual Div'd. Income Reinvested	Total Cumulative Cost (a)	DEDUCTIONS Sales Charge	DEDUCTIONS Custodian Fee	BALANCE INVESTED AFTER DEDUCTIONS Annually	BALANCE INVESTED AFTER DEDUCTIONS Cumulative	Annual Capital Gains Dists. Reinvested	Value of Accumulated Shares	Total Shares Accumulated
1938	*$130.00**	*$ 130.00*	*$ 1.44*	*$ 131.44*	*$ 65.00**	*$ 3.25**	*$ 61.87*	*$ 61.87*	*$ 1.08*	*$ 43.40*	*6.9*
1939	120.00	250.00	5.12	256.56	4.80	3.00	117.32	179.19	1.16	179.17	25.6
1940	120.00	370.00	6.93	383.49	4.80	3.00	119.13	298.32	9.76	320.97	44.5
1941	120.00	490.00	13.39	516.88	4.80	3.00	125.59	423.91	9.03	439.68	64.6
1942	120.00	610.00	25.38	662.76	4.80	3.00	138.08	561.99	6.74	529.49	86.3
1943	120.00	730.00	31.58	814.34	4.80	3.00	143.78	705.77	10.87	743.62	111.1
1944	120.00	850.00	38.69	973.03	4.80	3.00	150.89	856.66	23.43	1,047.76	133.4
1945	120.00	970.00	42.19	1,135.22	4.80	3.00	154.39	1,011.05	41.51	1,373.90	156.6
1946	120.00	1,090.00	43.32	1,298.54	4.80	3.00	155.62	1,166.57	84.21	1,817.35	181.5
1947	110.00	1,200.00	45.89	1,454.43	4.40	2.75	148.74	1,315.31	79.87	1,872.27	205.0
			$254.43		$107.80	$30.00			$267.66		

(a) Reflects the cumulative total of monthly payments, plus the cumulative amount of income dividends reinvested.

**Under the terms of this plan, out of the initial payment of $20, $10 is deducted as a sales charge, with $5 being deducted as a sales charge from each of the next 11 payments. Additional deductions include $.50 from the initial payment, and $.25 from each of the next 11 payments for custodian fees, with $1.32 also being deducted, from the initial payment only, for Federal issuance tax. Total deductions from the first 12 payments equal $69.57, or 53.5% of the total of the first 12 monthly payments. If all of the first 10 years' payments are made, total sales charge and other deductions amount to 11.5% of the total agreed payments.*

No allowance has been made for any income taxes payable by planholders on capital gains distributions and dividends reinvested in shares during the first 10 years.

SUMMARY

		Shares
Total Payments	$1,200.00	141
Income Dividends Reinvested	254.43	32
Total Investment Cost	$1,454.43	173
Capital Gains Distributions Reinvested	$ 267.66	32
Total Liquidating Value (Dec. 31, 1947)	$1,872.27	205

END OF PAYMENT PERIOD

RETAINED INVESTMENT PERIOD
(11th through 20th years—Distributions Received in Cash)

Year Ended	Total Cumulative Cost	Dividends from Investment Income	DEDUCTIONS Sales Charge	DEDUCTIONS Custodian Fee	Net Dividends from Investment Income Received in Cash	Capital Gains Received in Cash	Value of Accumulated Shares	Total Shares Held
1948	$1,454.43	$ 59.47	—	$ 2.40	$ 57.07	$ 43.06	$1,706.16	205.0
1949	1,454.43	66.63	—	2.40	64.25	35.89	1,669.25	205.0
1950	1,454.43	79.98	—	2.40	77.58	22.56	1,835.35	205.0
1951	1,454.43	82.03	—	2.40	79.63	30.76	1,950.19	205.0
1952	1,454.43	82.03	—	2.40	79.63	51.26	2,052.73	205.0
1953	1,454.43	82.03	—	2.40	79.63	51.26	2,140.90	205.0
1954	1,454.43	82.03	—	2.40	79.63	47.16	2,048.63	205.0
1955	1,454.43	84.08	—	2.40	81.68	64.60	2,522.33	205.0
1956	1,454.43	89.20	—	2.40	86.80	90.23	2,729.45	205.0
1957	1,454.43	91.25	—	2.40	88.85	92.28	2,663.83	205.0
		$798.75		$24.00	$774.75	$529.06		

PLAINTIFF'S EXHIBIT NO. 17

[Page 1]*

STUDY NUMBER 1

ANNUAL PREMIUM STUDY

Sources of Material: The "Common Stock Price Index" and the "Common Stock Net Yields" given in Appendix A of a booklet entitled "A New Approach to Retirement Income" by William C. Greenough of the Teachers Insurance and Annuity Association of America were used. The figures from the booklet were used for the period from 1880 to 1950, and an extension of the appendix was secured from Mr. Robert M. Duncan of the TIAA for the years 1951 through 1960. The sources of the "Common Stock Price Index" and the "Common Stock Net Yields", along with the changes made to extend the index over the entire period, are given on Pages 18 and 19 of Mr. Greenough's booklet.

Net Premium: The annual premium is assumed to be $10,000 for the purpose of this study. The loading schedule used for this study was 50 per cent of the first year, 15 per cent for the second and third years, 10 per cent for the fourth through ninth years, and eight per cent for the tenth and subsequent years. This produces net premiums of $5,000 for the first year, $8,500 for the second and third years, $9,000 for the fourth through the ninth years, and $9,200 for the tenth and subsequent years.

Appreciation Factor: For a particular calendar year, it was assumed that the index was representative of the market at some given time during the year. We were not studying the results for a particular year, but were looking at such results from the standpoint of duration only. Therefore, the appreciation factor for a particular year was taken as the Common Stock Price Index for the subsequent year divided by the Common Stock Price Index for the indicated year.

Market Value at End of Year: This represents the market value at the end of the previous year, plus the net premium, multiplied by the appreciation factor.

Gross Yield Rate: It is indicated in the Greenough booklet that the "Common Stock Net Yield" is determined by reducing the gross yield by one-quarter of one per cent. We, therefore, increased the net yields by this one-quarter of one per cent to obtain the gross yields. For purposes of calculation, the chart shows one-half the gross yield rate. The one-half is introduced in this factor to produce the mean fund by applying this one-half gross yield rate to the sum of the fund at the end of the previous year, plus the fund at the end of the current year.

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* On the original of this exhibit the page numbers appear on the reverse side of each page.

ividend Income: The dividend income is arrived at by taking he gross yield rate times the mean fund.

ctuarial Margin: The heading on some pages is printed as ctuarial year-end, but the intent was that this represent he actuarial margin. This is one per cent of the market alue at year-end plus the dividend income.

und at Year-End: This represents the market value at the nd of the year, plus the dividend income, minus the actuarial argin. The mean fund during the year is arrived at by taking he fund at the end of the previous year and increasing this y the net premium, then adding the fund at the end of the urrent year. The result is divided by two to produce the ean fund, and as commented on previously, this is the one-alf factor in the gross yield rate.

ccumulated Net Premiums: This is the arithmetic sum of the et premiums.

ase of Capital Gains Tax: This base for capital gains tax s taken as the accumulated sum of the net premium, plus ividend income, minus the actuarial margin.

apital Gains Tax: This represents 25 per cent of the excess f the fund at year-end over the base for capital gains tax.

ash Value: This represents the fund at year-end, minus the apital tains tax if any.

xcess Cash Value Guarantee: This represents the excess of he accumulated net premiums over the cash value at any uration.

SINGLE PREMIUM STUDY

The single premium study utilizes the same method and assumptions as study number 1, with the exception that it is assumed that a single premium of $10,000 is received. No loading was assumed in this case merely because this facilitated the modification of the electonronics program.

[Page 3]

STUDY NUMBER 1

ANNUAL PREMIUM STUDY

Error in study: In the set up of the electronics program for calculating, sufficient space was not allocated for the base for capital gains tax, and, therefore, at the higher durations, erroneous figures were produced in this column. This error affects the capital gains tax and the cash value at these durations.

In the development of the study, it was recognized that figures for such long durations would be entirely without meaning, and they were calculated merely because it was easier to calculate to the end of the data available in place of stopping at an intermediate point.

Earl S. Magnuson

SKC

September 27, 1963

STUDY NUMBER 2

MONTHLY PREMIUM STUDY

Source of Material: Standard & Poor's - Daily Stock Price Indexes - 1926 to 1960, Published by Standard & Poor's Corporation, 345 Hudson Street, New York 14, New York. The "Composite" Daily Stock Price Index on a month-end basis was used. The yield percentages were used to approximate the dividends. The month-end closing figures were available for the year 1928 and following. The yield percentages for the years 1928 through 1934 were available on an annual basis, while those for the year 1935 and following were available on a quarterly basis.

Net Premium: A $1,000 monthly premium was assumed and the loading schedule was as follows:

	Loading	Net Premium
1st Policy Year	50%	$500
2nd through 10th Policy Year	10%	900
11th and Subsequent Policy Years	5%	950

Development of Accumulation Factors: First, an appreciation factor was determined from the Stock Price Index by taking the index at the end of a particular month and dividing it by the index at the end of the previous month. For the first period the index at the beginning of the first month was used for January, 1928.

1/12 of the yield rate plus 1 was used to determine the increment from dividends. For the years 1928 through 1935 this factor was constant for the entire year. For the year 1935 and subsequent, this factor varied on a quarterly basis and was constant for one-quarter in each case.

The accumulation factor was taken as a product of (.99917) x (1/12 yield rate plus 1) x (appreciation factor).

Market Value Month-End: For any duration, this is the market value at the end of the previous month plus the net premium multiplied by the accumulation factor.

Fund at Month-End: Is the same as market value at month-end.

Accumulated Net Premium: This is the arithmetic sum of the net premiums.

Base for Capital Gains Tax: This is taken as the accumulated net premium.

Capital Gains Tax: The capital gains tax is 25 per cent of the excess of the fund at month-end over the base for capital gains tax. For this particular study the calculation of the capital gains tax is not correct.

Cash Value: The cash value column is the fund at month-end minus the capital gains tax if any.

Excess Cash Value Guarantee: This column represents the excess if any of the accumulated net premium over the cash value.

Purpose of Study: One of the main purposes of this study was to gain further insight into the operation of the monthly accumulation factors. Calculations were made at selected intervals to show the relation of the cash value to the accumulated net premium where there was a cash value guarantee. Information was also gained into the fluctuation of the fund from month to month.

STUDY NUMBER 3

MONTHLY PREMIUM STUDY

Source of material: The month-end closing prices of the Dow-Jones industrial index for the years 1937 through 1961 were used for this study. The quarterly dividends for the Dow-Jones industrial index were also obtained. The exact source of the index figures is difficult to give at this time. Prior to a certain date, a booklet was published giving these figures, and this booklet was used for those years. Following the discontinuance of the publication of this booklet, the Investment Department has maintained a file of clippings from "Barron's" and The Wall Street Journal.

Net premiums: Two separate studies were made by varying the net premium. In the first case, the net premium in all cases was assumed to be $100. In the second case, the monthly premium was assumed to be $1,000 less a loading percentage as follows:

Policy Year	Loading	Net Premium
1st policy year	50%	$500
2nd through 10th policy year	9.5%	$905
11th and subsequent policy year	5%	$950

Accumulation factor: The quarterly dividends referred to in the first paragraph were assumed to be constant throughout the quarter, and, therefore, we approximated the monthly dividend by dividing the quarterly dividend by 3 and rounding to the nearest cent. The accumulation factor was then determined by taking the index for the end of a particular month and adding this monthly dividend and dividing the total by the index at the end of the previous month. For the initial period, January 1937, the index at the beginning of the month was used as the starting figure.

Market value at month end: The market value at the end of the month was determined both on the basis of a 1% and a 0% actuarial margin. The market value at the end of the month is the accumulation factor times the market value at the end of the previous month plus the net premium. For the 1%

actuarial margin studies, the result was multiplied by the factor .99917.

Gross yield rate: This column was not used, and, therefore, the heading has no meaning.

Fund eom/premium: This represents the fund at the end of the month divided by the accumulated net premium.

Cash value/premium: This represents a cash value divided by the accumulated net premium.

Fund at month end: This represents the same as the market value at month end.

Accumulated net premium: This represents the arithmetic sum of the net premiums.

Base for capital gains tax: This represents the same as the accumulated net premium.

Capital gains tax: This represents 25% of the excess of the fund at the end of the month over the accumulated net premiums. As commented on in Study Number 2, this capital gains tax is not correct.

Cash value: This represents the fund at month end minus the capital gains tax, if any.

Excess cash value guarantee: This represents the excess of the accumulated net premium over the fund at month end.

Earl S. Magnuson

SKC

September 27, 1963

	MOODY'S 125 INDUSTRIALS							MOODY'S 24 UTILITIES						
	Mean Price	HI Mo.	HI Market	LO Mo.	LO Market	Inter Year Drop Hi-Lo %	Duration of Drop and %	HI Mo.	HI Market	LO Mo.	LO Market	Inter Year Drop Hi-Lo %	Duration of Drop and %
1960	171.77	6	178.62	10	164.91	7.7	15.9% 1 Yr.-3 Mo.	12	76.82	1	64.67		
1959	185.27	7	196.07	3	174.47			3	68.12	6	64.25	5.7	
1958	153.86	12	177.75	2	129.97			12	66.37	1	53.04		
1957	143.02	7	157.66	12	128.38	18.6	19.3% 1 Yr.-5 Mo.	5	51.85	10	47.15	9.1	9.3% 1 Yr.-3 Mo.
1956	149.55	7	158.98	1	140.11			7	51.98	9	48.42	6.9	
1955	131.25	12	145.67	1	116.83			8	51.43	1	46.94		
1954	98.51	12	115.64	1	81.37			12	47.56	1	40.87		
1953	76.11	1	80.37	8	71.85	10.6		11	39.70	6	36.02		
1952	76.31	12	80.89	4	71.73			12	37.85	4	33.97		
1951	70.61	8	74.46	6	66.75			12	33.85	6	31.70		
1950	58.52	12	64.46	1	52.58			5	33.51	7	29.73	11.3	
1949	47.87	12	52.28	5	43.46			12	30.57	2	26.93		
1948	46.99	6	50.77	2	43.20		22.8% 1 Yr.-9 Mo.	5	28.41	11	25.80	9.2	29.5% 2 Yr.-6 Mo.
1947	45.73	7	47.88	5	43.58			1	32.31	11	25.20	22.0	
1946	49.99	5	55.97	11	44.00	21.4		5	36.62	9	30.93	15.5	
1945	44.33	12	49.30	1	39.35			11	31.62	1	22.35		
1944	36.52	12	38.65	2	34.39			8	21.88	4	20.26		
1943	33.73	6	36.44	1	31.02			12	21.01	1	15.58		
1942	25.87	12	29.05	4	22.69			12	14.29	4	11.41		
1941	28.59	7	30.72	12	26.46	13.9		1	21.90	12	13.45	38.6	
1940	31.46	3	35.61	5	27.30	23.3	54.1% 5 Yr.-2 Mo.	1	28.87	11	22.14	23.3	73.9% 5 Yr.-6 Mo.
1939	34.28	9	37.37	6	31.19			7	29.89	3	25.71		
1938	30.96	12	37.65	3	24.26			10	28.71	3	18.93		
1937	39.38	2	49.41	12	29.34	40.6		1	42.46	12	24.24	43.0	
1936	42.64	11	47.38	4	37.89			10	43.71	4	35.16		
1935	31.00	12	37.66	3	24.35			12	36.06	2	17.90		
1934	26.58	1	29.61	7	23.55	20.5		2	33.44	12	21.06	37.1	
1933	20.29	8	27.85	2	12.73			6	45.79	3	26.70		89.5% 5 Yr.-6 Mo.
1932	14.48	9	18.39	6	10.56			5	24.00	2	45.23		
1931	29.84	2	41.11	12	18.57	54.8	86.5% 2 Yr.-10 Mo.	2	91.34	12	43.23	52.7	
1930	47.22	3	59.62	12	34.81	41.6		4	136.05	12	73.30	46.2	
1929	64.38	8	78.06	11	50.70	35.1		8	169.80	11	96.52	43.2	

1937-1942 119

MARKET STUDY IN RELATION TO THE GUARANTEE OF NET PREMIUM INVESTED UNDER A FLEXIBLE FUND POLICY

1. We have assumed that our worst experience in a declining market will result on the members coming into the program at the high of the market.
2. If we exclude the large and prolonged drop in the markets in the 1929 - 1932 period, a large drop and prolonged drop in the market since that time was over the 1937 - 1942 period and the high of 1937 not being again reached until 1945. It is this period that we used for our study. Because of the only 50% of the gross premium being available for investment in the initial period of the program and 90% thereafter, we started our study one year before the high of our market.

The following is the market action of the 125 Moody's Industrial averages over the period of our study:

		per cent change
1st Period	market increase	40.9%
2nd Period	" (decrease)	(0.9%)
3rd Period	" (decrease)	(23.1%)
4th Period	" increase	5.5%
5th Period	" (decrease)	(6.9%)
6th Period	" (decrease)	(9.6%)
7th Period	" (decrease)	(10.5%)
8th Period	" increase	33.0%
9th Period	" increase	7.0%
10th Period	" increase	20.2%

Market Study

From the high of the market in 1936 to the low reached in 1942 represents a drop of 39.4% over a seven year period.

Over the period of 1935 - 1945 the net increase in the market is one of about 3 3/4% compounded annually and the change in the dividend represents about a 3 5/8% increase compounded annually.

3. For our study we used the 125 Moody's Industrial Common Stock averages both on price and dividends. For our bond yields and markets we used a composite of Moody's AAA-AA-A Utility bonds. Historically the return on utility bonds has always been better than that found on industrial bonds. For the market value of the bonds we assumed a thirty year bond priced at the yield average available at the end of a period.

4. We deducted 1% annual investment expense and profit margin from the market plus income to arrive at the cash value of the fund at the end of any period and also reduced the gross income by this margin before reinvesting the succeeding year.

5. We made our investment at the beginning of a period and included Common Stock commissions. We used the market value at the first of the succeeding period for our valuation of stocks. For income we used the average of the current and next period. We assume purchasing bonds at par.

6. We assume a gross premium of $10,000 annually over ten periods representing a $100,000 total gross premium and net premiums of $86,000 ($5,000 the first period and $9,000 each nine succeeding periods).

Jerry Schwaab
Sept. 1, 1961

	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944
Market Entry	30.09	42.40	42.04	32.35	34.12	31.76	28.70	25.70	34.18	36.57
Market Term Value	42.40	42.04	36.35	34.12	31.76	28.70	25.70	34.18	36.57	43.94
% Market Appreciation or (Depreciation)	40.9%	(0.9)%	(23.1)%	5.5%	(6.9)%	(9.6)%	(10.5)%	33.0%	7.0%	20.2%
Accumulated Net Premium	$5,000	$14,000	$23,000	$32,000	$41,000	$50,000	$59,000	$68,000	$77,000	$86,000

Investment Distribution

	Stocks	Bonds									
Copy A	100%	-	141.98	116.86	87.92	98.34	94.76	90.62	86.92	121.91	131.81	158.62
B	80%	20%	134.23	114.32	91.47	100.80	98.55	95.71	92.90	121.76	130.17	152.35
C	70%	30%	130.36	113.05	93.25	102.03	100.45	98.26	95.89	121.68	129.35	149.21
D	60%	40%	126.50	111.80	95.03	103.26	102.35	100.80	98.87	121.60	128.53	146.09
YY	55%	45%	124.59	111.55	95.92	103.88	103.30	102.10	100.36	121.56	128.13	144.53
E	50%	50%	122.66	110.52	96.80	104.49	104.26	103.35	101.86	121.53	127.72	142.97
ZZ	45%	55%	120.65	109.87	97.67	105.11	105.19	104.65	103.35	121.47	127.30	141.39
F	40%	60%	118.75	109.25	98.58	105.73	106.14	105.93	104.85	121.44	126.90	139.83
G	35%	65%	116.81	108.61	99.47	106.33	107.09	107.16	106.34	121.40	126.47	138.25
M	30%	70%	114.88	107.98	100.36	106.96	108.05	108.44	107.84	121.37	126.08	136.71
a) Bonds Rate			3 7/8%	3 1/2%	3 1/2%	3 3/8%	3 3/8%	3 1/8%	3 1/8%	3 1/4%	3 1/4%	3%

b) Compound Rate of Growth of Stock Market - 3 3/4%

c) Compound Rate of Growth of Dividend on Common 3 5/8

d) Market Change 1936 Hi to 1942 Lo - (39.4%), 7 Yr. Period

e) All Income Reinvested in Stocks

Annual Dividend Rate on Common Stock	1.24	1.71½	1.63	1.19½	1.41	1.75	2.74	1.60½	1.61	1.71½

Moody's 125 Industrial Stocks yearly averages.
Moody's Average Bond Coupons on New Money & Yearly Yield on Outstanding Issues.

Stock Income in Stock
Bond Income in Bonds

	Bonds	Stocks									
WW ✓	55%	45%	149.11	111.15	96.15	104.03	103.63	102.62	101.12	121.19	127.50	139.58
XX	60	40	126.50	111.79	95.29	103.40	102.65	101.29	99.54	121.24	127.95	144.55

		1935	1936	1937	1938	1939	1940	1941	1942	1943	1944
Stock Income in Stock Bond Income in Bonds (cont'd.) Bonds 55% Stocks 45%											
2	a) Assume 5.3% annual decrease 1st 3 yrs. & 10.6% for last 3.	124.59	108.36	105.15	104.55	101.61	100.26	98.79			
3	b) Assume 10.6% drop each year for 1st 3 yrs. & 5.3% last 3.	124.59	105.04	100.28	98.52	100.37	102.10	103.48			
4	c) Assume 8.02% drop each year from Hi to Lo (7 years)	124.59	106.66	102.61	101.39	100.92	101.26	101.09			

The following is the experience developed in our study as reflected by the percent of the cash value of the fund in relation to the net premium at the end of any period.

I. Experience over the ten year period using our above 1 through 6 data and starting with 100% of investment in stocks and changing the allocation of investments between stocks and bonds. We include market gain or loss on the bonds because of the changing position of rates and yields over the period. (See Exhibits A-B-C-D-E-F-G & M.)

II. Experience using the actual percentage change both in price and dividend in the common markets over the 1935-45 period and applying these percentages to the current price and dividend of the 125 Moody's Industrials. (See Item No. 2 of our General Assumption.) The bonds were assumed to have a 4 3/4% coupon and return, therefore there was no bond market gain or loss. This experience can be compared to the 50%-50% allocation in I. above. (See Exhibit H.)

III. Instead of using the actual stock market fluctuations over the 1935-45 period we used a compound annual rate of increase in market of 3 3/4% and an annual compound rate of increase in dividends of 3 5/8% and a 100% stock investment to compare with the 100% stock investment in I. These compound rates of growth give the same net result in rise of prices and dividends as does the change in markets through the periods used. (See Exhibit I.)

IV. In this series we used 125 Moody's Industrial current market and dividends for our starting period and allowed a 5% compound annual rate of growth over the 10 year period in each, with varying assumptions as to the allocation of investments. We used no market gain or loss on bonds since we used a steady yield of 4 3/4% on the bonds through the

period. As we have projected a constant growth in stock prices we would have had to project a decline in bond prices and rise in bond yields which would result in a market valuation reflecting losses rather than gains. The constant bond yield used tends to offset the effect of lowering bond prices and higher investment bond income in projections into the future. This is especially true when we have not allowed for any stock market declines. The results of this study can be compared to the respective allocated investments in I-II & III. (See Exhibits J-K & L.)

JS-9-1-61

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YEAR END CASH VALUE AS A % OF NET PREMIUM

END OF PERIOD	1st Per.	2nd Per.	3rd Per.	4th Per.	5th Per.	6th Per.	7th Per.	8th Per.	9th Per.	10th Per.
ACCUMULATED NET PREMIUM	$ 5,000	$14,000	$23,000	$32,000	$41,000	$50,000	$59,000	$68,000	$77,000	$86,000
I. INVEST. ALLOC.										
100% Stock	141.98%	116.86%	87.92%	98.34%	94.76%	90.62%	86.92%	121.91%	131.81%	158.62%
Bonds / Stock										
20% / 80%	134.23	114.32	91.47	100.80	98.55	95.71	92.90	121.76	130.17	152.35
30% / 70%	130.36	113.05	93.25	102.03	100.45	98.26	95.89	121.68	129.35	149.21
40% / 60%	126.50	111.80	95.03	103.26	102.35	100.80	98.87	121.60	128.53	146.09
50% / 50%	122.66	110.52	96.80	104.49	104.26	103.35	101.86	121.53	127.72	142.97
60% / 40%	118.75	109.25	98.58	105.73	106.14	105.93	104.85	121.44	126.90	139.83
65% / 35%	116.81	108.61	99.47	106.33	107.09	107.16	106.34	121.40	126.47	138.25
70% / 30%	114.88	107.98	100.36	106.96	108.05	108.44	107.84	121.37	126.08	136.71
II. Bonds / Stock										
50% / 50%	123.34	110.69	97.08	103.45	102.09	100.40	99.08	119.24	125.35	141.12
III.										
100% Stock	106.74	109.31	112.79	116.56	120.52	124.67	129.03	133.60	138.40	143.37
IV.										
100% Stock	107.00	109.52	113.09	116.92	120.97	125.26	129.73	134.43	139.34	144.48
Bonds / Stocks										
20% / 80%	106.25	108.55	111.76	115.36	118.96	122.83	126.92	131.17	135.64	140.31
50% / 50%	105.35	107.27	109.97	112.93	116.08	119.35	122.82	126.44	130.23	134.20

	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945
Common Market - Boston	40.9%	(0.9%)	(23.1%)	5.5%	(16.9%)	(9.6%)	(10.5%)	33.0%	7.0%	20.2%

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FLEXIBLE FUND PROJECTION
(1961 - 1971)

111

The attached summary shows the results of our study as reflected by the percent of the Cash Value of the fund in relation to the Net Premium at the end of any period. This part of the study projects values for the next ten years, based on various assumptions as outlined in A through I. In all instances, for stock averages and dividends we used Moody's 125 Industrials as a starting point for 1961. On the studies where we used varying bond rates, we showed bond appreciation, but limited that appreciation to the amount of the call premium.

The following assumptions are used for the various series of studies:

A. Today's stock prices and dividends are increased 5% each year. Bonds are invested at 4 3/4% with no appreciation. All income is reinvested in stocks.

B. Market action and dividend action will be the same 1961/1971 as it was 1935/1945. Bonds are invested at 4 3/4% with no appreciation. All income is reinvested in stocks.

C. Same as B except that we go in at the high of the Market rather than one year before as is the case on all other studies.

D. Market action and dividend action will be the same 1961/1971 as it was 1935/1945. Bonds are invested at 4 3/4% with no appreciation. Bond income is reinvested in bonds, stock income in stocks.

E. Market action and dividend action will be the same 1961/1971 as it was 1935/1945. Rate and yield on bonds will follow the same pattern 1961/1971 as 1935/1945. Start with 4 3/4% bond today and show appreciation. Bond income is reinvested in bonds, stock income in stocks.

F. Today's stock prices decline at an average rate each year for ten years. Bond yields are constant with no appreciation. Dividends per share remain the same as today for each year of the ten year period. Bond income is reinvested in bonds, stock income in stocks.

G. Stock prices decline at an average rate (7.89% annually) from the high of the Market to the low rather than following the actual market trend of 1935/1945. Bond rates start at 4 3/4% and decline at an average rate (2.625% annually) rather than following the actual trend of 1935/1945. Bond appreciation is shown. Bond income is reinvested in bonds, stock income in stocks.

H. Same assumptions as G with dividend action the same 1961/1971 as 1935/1945.

I. Market action and dividend action will be the same 1961/1971 as it was 1933/1943. Rate and yield on bonds will follow the same pattern 1961/1971 as 1933/1943. Start with 4 3/4% bonds today and show appreciation. Bond income is reinvested in bonds, stock income in stocks. At the end of 7 and 8 years respectively, the fund is put into 100% stocks.

CASH VALUE AS A % OF NET PREMIUM

Details on Study	Series		Yr. 1	2	3	4	5	6	7	8	9	10
			1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
J	A	100% Stock	107.0	109.5	113.1	116.9	120.9	125.2	129.7	134.4	139.3	144.5
L		80% Stock-20% Bonds	106.3	108.5	111.8	115.3	118.9	122.8	126.9	131.2	135.6	140.3
K		50% Stock-50% Bonds	105.4	107.3	110.0	112.9	116.1	119.3	122.8	126.4	130.2	134.2
16	B	100% Stock	142.6	116.4	88.1	98.5	94.2	89.4	85.4	119.7	128.8	154.4
15		50% Stock-50% Bonds	123.1	110.7	97.1	103.5	102.1	100.4	99.1	119.2	125.4	141.1
14	C	100% Stock		101.1	80.4	94.9	91.9	87.9	84.6	119.1	127.9	153.0
13		50% Stock-50% Bonds		102.1	92.5	100.8	100.0	98.8	97.9	117.9	123.7	139.0
12	D	50% Stock-50% Bonds	123.2	110.7	97.5	103.7	102.5	101.2	100.3	118.5	124.1	138.1
17 & 11		55% Stock-45% Bonds	125.1	111.3	96.5	103.1	101.7	100.0	98.9	118.6	124.6	139.8
36	E	65% Stock-35% Bonds	130.5	113.8	96.0	103.3	101.1	98.6	96.6	119.4	126.0	143.2
37		60% Stock-40% Bonds	128.8	113.5	97.1	104.0	102.1	99.9	98.2	120.0	125.6	141.6
11		55% Stock-45% Bonds	127.1	113.1	98.2	104.7	103.1	101.2	99.8	119.4	125.2	140.0
38		53% Stock-47% Bonds	126.0	112.8	99.1	105.3	103.7	101.9	100.5	119.5	125.2	139.6
10		50% Stock-50% Bonds	125.4	112.7	99.4	105.4	104.1	102.5	101.3	119.3	124.8	138.4
	F	55% Stock-45% Bonds										
20 & 24		5% Bond-6% Ann.St.Decline	99.6	99.5	99.6	99.8	100.1	100.5	101.1	101.7	102.5	103.5
20 & 21		5% Bond-6½% " " "	99.3	99.2	99.2	99.2	99.4	99.8	100.3	100.9	101.7	102.6
20 & 22		5% Bond-7% " " "	99.0	98.8	98.7	98.7	98.9	99.1	99.6	100.2	100.9	101.8
17 & 24		4-3/4% Bond-6% " "	99.4	99.3	99.4	99.5	99.7	100.1	100.6	101.2	101.9	102.7
17 & 21		4-3/4% Bond-6½% " "	99.2	99.1	99.0	99.0	99.1	99.4	99.8	100.4	101.0	101.9
17 & 22		4-3/4% Bond-7% " "	98.9	98.6	98.5	98.4	98.5	98.7	99.1	99.6	100.3	101.1
23 & 24		4½% Bond-6% " " "	99.3	99.2	99.2	99.2	99.4	99.7	100.1	100.6	101.2	102.0
23 & 21		4½% Bond-6½% " " "	99.1	98.7	98.7	98.7	98.7	99.0	99.3	99.8	100.4	101.1
23 & 22		4½% Bond-7% " " "	98.8	98.5	98.2	98.1	98.2	98.3	98.6	99.1	99.6	100.4

Details on Study	Series	Yr. 1	2	3	4	5	6	7	8	9	10
		1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
	G	55% Stock-45% Bonds									
30		Dividend action same 1961/71 as 1935/45	126.8	108.9	105.2	102.7	101.4	101.0	100.7	120.3	126.1	140.9
29		Div. declines @ Aver. Rate	126.8	109.6	105.4	103.4	102.3	101.4	100.3	119.4	125.2	140.0
28		Dividend remains constant	126.8	109.1	104.9	102.9	101.9	101.3	100.5	120.1	125.8	140.7
39		100% Stock (Div. action same as 1935/45-Stock Price same first 2 yrs. then average decline)	101.8	94.6	92.3	89.0	86.4	85.1	83.7	117.6	126.7	152.2
30 & 31	H	55% Stock-45% Bonds	126.8	108.2	105.2	102.7	101.4	101.0	100.7	120.3	126.1	141.0
32		60% Stock-40% Bonds	128.5	108.9	104.6	101.8	100.2	99.6	99.1	120.4	126.5	142.5
34		62½% Stock-37½% Bonds	129.4	108.9	104.4	101.3	99.6	98.9	98.3	120.4	126.7	143.4
33		65% Stock-35% Bonds	130.2	108.8	104.1	100.9	99.0	98.2	97.5	120.4	126.9	144.2
25	I	55% Stock-45% Bonds	113.2	117.5	138.9	129.9	108.7	113.7	110.6	107.0	103.9	123.5
26		To 100% Stock after 7 Yrs.								102.5	95.5	130.8
27		To 100% Stock after 8 Yrs.									99.2	135.3

CASH VALUE AS % OF NET PREMIUMS

	1st Period	2nd Period	3rd Period	4th Period	5th Period	6th Period	7th Period	8th Period	9th Period	10th Period
Current Market-Historical Action										
100% Stock B-16 III	142.6	116.4	88.1	98.5	94.2	89.4	85.4	119.7	128.8	154.4
Average 8.02% Decline in Stock Market-No Rise first 2 Yrs.										
100% Stock B-39 III	101.8	94.6	92.3	89.0	86.4	85.1	83.7	117.6	126.7	152.2
Current Market-Historical Action in Stocks & Bonds. 7.89% Average Annual Drop in Stock Market-2 5/8% Average Annual Drop in Bond Yields. Bond Apprec. ends at Coupon.										
Stocks / Bonds										
65% / 35% H-33	130.2	108.8	104.1	100.9	99.0	98.2	97.5	120.4	126.9	144.2
62½ / 37½ H-34	129.4	108.9	104.4	101.3	99.6	98.9	98.3	120.4	126.7	143.4
60 / 40 H-32	128.5	108.9	104.6	101.8	100.2	99.6	99.1	120.4	126.5	142.6
55 / 45 H-30-31	126.8	108.9	105.2	102.7	101.4	101.0	100.7	120.3	126.1	141.1

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5% Rate on Bonds - 3% Yield on Common

25% Annual Decline in Stock Market	100% Stock AA1	78.7	70.6	64.0	58.1	53.1	48.8	45.2	42.2	39.6	37.4
	75% Stock-25% Bonds AA2	84.1	79.7	75.0	71.0	67.8	65.1	62.9	61.3	60.0	58.9
	55% Stock-45% Bonds AA3	88.9	86.6	83.7	81.3	79.5	78.1	77.1	76.6	76.2	76.1
8% Annual Decline in Stock Market	75% Stock-25% Bonds BB-1	98.7	95.5	94.1	93.1	91.8	90.8	90.0	89.2	88.6	88.0
	60% Stock-40% Bonds BB-2	99.9	97.4	96.8	96.4	95.8	95.4	95.2	95.1	95.0	95.1
3½% Rate Bonds - 8% Decline in Stock Price 4% Increase in Stock Div. CC										
	75% Stock-25% Bonds	99.0	97.0	95.6	95.0	94.7	94.7	95.2	96.1	97.6	99.6

We reviewed the annual Highs and Lows on Moody's 125 Industrial Common Stock prices over the periods 1929 through 1960. The greatest percentage decline for any respective period was determined to have been the following:

							% Decline
1 Year	1937	hi	49.41	1938	lo	24.26	(-50.9)
2 "	1936	hi	47.38	1938	lo	24.26	(-48.8)
3 "	1937	hi	49.41	1940	lo	27.30	(-44.7)
4 "	1937	hi	49.41	1941	lo	26.46	(-46.4)
5 "	1937	hi	49.41	1942	lo	22.69	(-54.1)
6 "	1936	hi	47.38	1942	lo	22.69	(-52.1)
7 "	1935	hi	37.66	1942	lo	22.69	(-39.7)
8 "	1936	hi	47.38	1944	lo	34.39	(-27.4)
9 "	1933	hi	27.85	1942	lo	22.69	(-18.5)
10 "	1937	hi	49.41	1947	lo	43.58	(-11.8)

Applying these percentage drops (averaged for annual basis) we took a 100% stock fund with an annual Net Premium of 50% of Gross Premiums the first year and 90.5% of Gross Premium each year thereafter and determined the cash value of the fund at the end of the respective periods of the market drops and our results were: (See Exhibit X)

[Page 21]

Worst Drop In Averages Over The Period	Cash Value At End Of Period % of Net Premium	Suggested Guarantee %
1 Year	51.6%	50%
2 Year	67.2%	55%
3 Year	74.3%	60%
4 Year	75.3%	65%
5 Year	71.5%	70%
6 Year	74.4%	75%
7 Year	84.2%	80%
8 Year	93.1%	85%
9 Year	99.6%	90%
10 Year		100%

Applying these market drops to a Single Premium fund our results were: (See Exhibit Y)

Worst Drop In Averages Over The Period	Cash Value At End Of Period % of Net Premium	Suggested Guarantee %
1 Year	51.6%	50%
2 Year	55.3%	50%
3 Year	61.2%	50%
4 Year	61.3%	50%
5 Year	55.2%	50%
6 Year	59.1%	60%
7 Year	73.9%	70%
8 Year	88.8%	80%
9 Year	100.1%	90%
10 Year		100%

100% STOCK 132

Exhibit X

Stock Prices Decline at an Average Rate
Dividend is 3% Yield on Book Value

Avg. Annual Decline in Mkt.	Yr.	Accumulated Net Premium	Actuarial Margin 1%	Cash Value of Fund	Cash Value -% Net Premium
Yr. 50.9%	1937	$ 5,000	$ 26.05	$ 2,578.95	51.6%
Yr. 28.45%	1936	5,000	37.27	3,690.23	73.8
	1937	14,050	95.44	9,448.16	67.2
Yr. 17.92%	1937	5,000	42.54	4,211.46	84.2
	1938	14,050	113.12	11,198.59	79.7
	1939	23,100	173.29	17,155.46	74.3
Yr. 14.46%	1937	5,000	44.27	4,382.73	87.7
	1938	14,050	119.12	11,793.24	83.9
	1939	23,100	185.37	18,351.86	79.4
	1940	32,150	244.59	24,213.93	75.3
Yr. 14.42%	1937	5,000	44.29	4,384.71	87.7
	1938	14,050	119.23	11,804.12	84.0
	1939	23,100	185.50	18,364.83	79.5
	1940	32,150	244.55	24,210.02	75.3
	1941	41,200	297.49	29,451.47	71.5
Yr. 11.54%	1936	5,000	45.73	4,527.27	90.5
	1937	14,050	124.36	12,311.65	87.6
	1938	23,100	196.02	19,406.18	84.0
	1939	32,150	261.64	25,901.92	80.6
	1940	41,200	322.00	31,877.85	77.4
	1941	50,250	377.84	37,405.91	74.4
Yr. 6.97%	1935	5,000	48.01	4,753.49	95.1
	1936	14,050	132.69	13,135.89	93.5
	1937	23,100	213.42	21,128.68	91.5
	1938	32,150	290.67	28,776.66	89.5
	1939	41,200	364.77	36,112.25	87.7
	1940	50,250	435.92	43,156.55	85.9
	1941	59,300	504.48	49,943.64	84.2
Yr. 3.92%	1936	5,000	49.54	4,904.46	98.1
	1937	14,050	138.28	13,689.64	97.4
	1938	23,100	225.49	22,323.46	96.6
	1939	32,150	311.29	30,817.96	95.9
	1940	41,200	395.89	39,193.43	95.1
	1941	50,250	479.35	47,455.43	94.4
	1942	59,300	561.74	55,612.35	93.8
	1943	68,350	643.05	63,662.42	93.1
Yr. 2.25%	1933	5,000	50.38	4,987.12	99.7
	1934	14,050	141.45	14,004.02	99.7
	1935	23,100	232.42	23,009.48	99.6
	1936	32,150	323.24	32,001.06	99.5
	1937	41,200	414.08	40,994.37	99.5
	1938	50,250	504.95	49,989.70	99.5
	1939	59,300	596.00	59,004.40	99.5
	1940	68,350	687.14	68,027.15	99.5
	1941	77,400	778.65	77,085.94	99.6

Exhibit Y

100% STOCK 133

Stock Prices Decline at an Average Rate
Dividend is 3% Yield on Book Value

	Avg. Annual Decline	Year	Net Premium	Actuarial Margin 1%	Cash Value of Fund	Cash Value-% Net Premium
1 Yr.	50.9%	1937	$10,000	$52.10	$5,157.90	51.6%
2 Yr.	28.45%	1936	10,000	74.55	7,380.45	73.8
		1937		55.91	5,534.69	55.3
3 Yr.	17.92%	1937	10,000	85.08	8,422.92	84.2
		1938		72.19	7,146.42	71.5
		1939		61.81	6,119.00	61.2
4 Yr.	14.40%	1937	10,000	88.54	8,765.46	87.7
		1938		78.06	7,728.21	77.3
		1939		69.23	6,853.46	68.5
		1940		61.90	6,127.81	61.3
5 Yr.	14.42%	1937	10,000	88.58	8,769.42	87.7
		1938		78.13	7,735.31	77.4
		1939		69.32	6,862.97	68.6
		1940		61.94	6,132.15	61.3
		1941		55.75	5,518.88	55.2
6 Yr.	11.54%	1936	10,000	91.46	9,054.54	90.5
		1937		83.19	8,235.87	82.4
		1938		76.02	7,525.80	75.3
		1939		69.76	6,906.00	69.1
		1940		64.37	6,372.45	63.7
		1941		59.73	5,913.56	59.1
7 Yr.	6.97%	1935	10,000	96.03	9,506.97	95.1
		1936		91.52	9,060.01	90.6
		1937		87.43	8,655.57	86.6
		1938		83.72	8,288.42	82.8
		1939		80.34	7,953.75	79.5
		1940		77.31	7,653.55	76.5
		1941		74.63	7,388.25	73.9
8 Yr.	3.92%	1936	10,000	99.08	9,808.92	98.1
		1937		97.31	9,633.57	96.3
		1938		95.80	9,484.60	94.8
		1939		94.28	9,333.45	93.3
		1940		92.90	9,197.39	92.0
		1941		91.66	9,074.36	90.7
		1942		90.62	8,971.03	89.7
		1943		89.65	8,875.17	88.8
9 Yr.	2.25%	1933	10,000	100.75	9,974.25	99.7
		1934		100.52	9,951.56	99.5
		1935		100.44	9,943.98	99.4
		1936		100.42	9,941.52	99.4
		1937		100.44	9,943.92	99.4
		1938		100.50	9,949.81	99.5
		1939		100.69	9,968.47	99.7
		1940		100.90	9,989.73	99.9
		1941		101.17	10,015.73	100.1

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The Glow Gets Rosier for Variable Annuities, Business Week, January 29, 1966	13, 14
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In the Supreme Court of the United States

OCTOBER TERM, 1966

No.

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

UNITED BENEFIT LIFE INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of the Securities and Exchange Commission, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered on March 10, 1966, which affirmed the judgment of the district court entered on April 5, 1965.

OPINIONS BELOW

The opinion of the court of appeals (App. A, pp. 16-23, *infra*) is reported at 359 F. 2d 619. The oral

ruling, findings and conclusions of the district court (JA I 76-77, 105-107)[1] are unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 10, 1966 (App. B, p. 24, *infra*). On June 9, 1966, the Chief Justice extended the Commission's time to file a petition for a writ of certiorari to July 8, 1966, and on July 7, 1966, Mr. Justice Stewart further extended the time for petitioning to August 8, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the "insurance" exemptions to the disclosure and regulatory provisions of the Securities Act of 1933 and the Investment Company Act of 1940 comprehend a "Flexible Fund Annuity" under which the value of the purchaser's interest during the accumulation period and the size of the annuity available at maturity depend upon the value of a portfolio of securities.

STATUTES INVOLVED

The relevant provisions of the Securities Act of 1933, 48 Stat. 74, as amended, 15 U.S.C. 77a, *et seq.*, and the Investment Company Act of 1940, 54 Stat.

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[1] "JA I" and "JA II" refer to Volumes I and II, respectively, of the Joint Appendix in the court of appeals. "PX" refers to the Commission's exhibits.

789, 15 U.S.C. 80a-1, *et seq.*, are set forth in Appendix C, *infra*, pp. 25-27.

STATEMENT

The Securities and Exchange Commission instituted this action in the United States District Court for the District of Columbia to enjoin respondent from offering and selling securities in violation of the registration requirements of Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) and from engaging in activities enumerated in Section 7(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-7(b)) without registering its "Flexible Fund" pursuant to Section 8 of that Act (15 U.S.C. 80a-8). At issue is the applicability of these statutes to respondent's "Flexible Fund Annuity" program, which may be briefly described as follows:

A purchaser of a "Flexible Fund Annuity" makes fixed periodic payments to respondent. Respondent undertakes to pool these amounts, after certain specified deductions for sales and administrative expenses,[2] with amounts received from other purchasers of such contracts in a separate account called the "Flexible Fund" or "Flexible Fund A" (PX 2, 3; JA II 3, 13).[3] The assets of the Flexible Fund are invested

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[2] Fifty percent of the first year's payments is deducted, 9½ percent is deducted in each of the following nine years, and 5 percent in each of the following years (PX 2, 3; JA II 3, 13).

[3] Special enabling legislation in Nebraska permits respondent to establish and administer such a separate account. The

by respondent in securities, consisting largely of common stocks (PX 3, 8B; JA II 12, 15, 70). The portfolio is administered by respondent, and securities are bought or sold in accordance with the investment judgment of its management (PX 2, 3; JA II 8, 15). Each month respondent computes the net asset value of the Flexible Fund,[4] and this in turn fixes the value of each investor's pro rata share (PX 2, 3; JA II 3, 13).

The purchaser continues making payments until a "maturity" date selected by him when he first enters into the contract (subject to subsequent change within certain limitations) (PX 2, 3; JA II 2, 4, 18, 19). At any time during this "pay-in" period, he has the option of surrendering his contract and receiving the accumulated value of his interest in the Fund. If he dies during this period, his beneficiary receives either the accumulated value of his interest or a refund of the total of his payments theretofore made, whichever is larger (PX 2; JA II 2, 3).

At maturity, the contract holder may elect to take his total accumulation in cash or to apply it to the purchase of an annuity under which he receives fixed

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statute permits income and gains or losses on such an account to be credited or charged to amounts allocated to it "without regard to the other income, gains, or losses of the company." Neb. Rev. Stat. § 44-310.06 (1963 Cum. Supp.).

[4] The Flexible Fund is reduced each month by a provision for "Company income taxes" and by approximately 1 percent per year in monthly charges for investment management costs and for the cost of fulfilling the respondent's mortality and "minimum cash value" guarantees (PX 2, 3; JA II 3, 13; JA I 98).

monthly payments for the remainder of his life. The size of these payments is determined by the value of the contract holder's pro rata interest in the segregated fund on the maturity date (PX 2; JA II 2, 5). Once the "pay-out" period begins, he no longer has an interest in the Flexible Fund and the annuity payments do not fluctuate with changes in the market value of the Fund's portfolio.

In addition, the contract contains a "minimum cash value" provision under which respondent guarantees that if the accumulated value of the contract holder's interest at the time he withdraws from the Fund, whether at or before maturity, is less than a certain minimum amount, respondent will make up the difference between the accumulated value and the specified minimum. This guaranteed minimum is computed in terms of a percent of "net premiums"—*i.e.*, the purchaser's gross payments minus deductions for sales and administrative expenses (see note 2, p. 3, *supra*). The guarantee, in effect, assures purchasers that a percentage of the "net premiums" invested by them in the Fund, ranging from 50 percent in the first year to 100 percent after ten years, will be available upon withdrawal, either to be taken in cash or to be applied to the purchase of a fixed-dollar annuity (PX 2; JA II 3).

At the conclusion of the Commission's evidence, respondent moved to dismiss the complaint on the ground that the "Flexible Fund Annuity" was "an insurance product" and was therefore exempt from the requirements of the Securities Act of 1933 and the

Investment Company Act of 1940 (JA I 103-104). The district court entered findings of fact, among which was the following (JA I 105):

> 5. Under the guaranteed minimum cash value provision in the FFA policy the defendant guarantees to the annuitant a fixed dollar equal monthly retirement income after the maturity date is reached which income cannot be outlived and the defendant thereby assumes the investment risk involved in that guarantee.

On the basis of this finding, the district court concluded that respondent had, within the meaning of this Court's decision in *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Co.*, 359 U.S. 65, assumed a sufficient share of the investment risk to qualify the contract as an "insurance product," and it dismissed the complaint (JA I 106-107).

The court of appeals affirmed, holding that "United has assumed not only a substantial part, but by far the major part, of the investment risk over the duration of the entire policy. The obligations of United under the FFA, unlike those of the variable annuity, are stated, in large part, in terms of guaranteed dollar amounts; there is a substantial and meaningful 'floor' to the FFA policy" (pp. 22-23, *infra*).

REASONS FOR GRANTING THE WRIT

In *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Co. ("VALIC")*, 359 U.S. 65, this Court held that the purchaser of a variable annuity—*i.e.*, an annuity contract under which

the purchaser receives an interest that fluctuates in acordance with the market performance of a fund of securities—is entitled to the protections of the Securities Act of 1933 and the Investment Company Act of 1940, because such contracts are securities rather than "contracts of insurance." The contract involved in this case differs in certain respects from the variable annuity involved in *VALIC*, but its essential nature is the same. Both *VALIC* and this case concern a relationship in which the investor's return depends directly upon the investment performance of a managed pool of securities, and the need for the protections of the securities laws is as important here as in *VALIC*. The decision of the court of appeals that *VALIC* is inapplicable deprives that decision of much of its practical significance because insurance companies can readily provide the features which were deemed adequate here to render the contract an exempt "insurance product."

1. The Securities Act of 1933 requires full disclosure of the information necessary to enable the purchaser of a security intelligently to appraise the risks involved when he is asked to invest his funds in an enterprise managed by others. The Investment Company Act of 1940 provides additional protections, including safeguards to assure investor control over management and over investment policy, if the investment takes the form of a participation in a managed fund or pool of securities. The protections afforded by the securities laws were intended to apply whenever the investing public is asked to buy interests which place the purchaser in the position of directly

sharing the risk of the investment performance of a managed fund or pool of securities, and it was because such a relationship was not present in traditional insurance and annuity contracts that Congress enacted the insurance exemptions.

This Court has often noted that these statutes should be liberally construed to achieve their obvious purpose of protecting investors. The test for determining whether a contract is within the coverage of the securities laws must turn on "economic reality" so that "[t]he statutory policy of affording broad protection to investors [will] not be thwarted by unrealistic and irrelevant formulae." *Securities and Exchange Commission* v. *W. J. Howey Co.*, 328 U.S. 293, 298, 301. In construing exemptions from the registration requirements of the securities laws, "[t]he focus of inquiry should be on the need of the offerees for the protections afforded by registration." *Securities and Exchange Commission* v. *Ralston Purina Co.*, 346 U.S. 119, 127. See also *Securities and Exchange Commission* v. *C. M. Joiner Leasing Corp.*, 320 U.S. 344, 352-353.

Investor protection is as necessary here as it was in *VALIC* and as it is in the case of any open-end investment company, or mutual fund. Mutual funds commonly sell a substantial portion of their shares under periodic accumulation arrangements which are essentially identical to the terms on which the participations in respondent's Flexible Fund are sold. The shares sold under these periodic accumulation plans, like the interests acquired in the Flexible Fund, represent a proportional share of a portfolio of securi-

ties, largely common stocks. As with the plan involved here, the periodic accumulation plans provide for the payment by investors of specified sums of money at given intervals, and this money, after deduction for sales expenses, is pooled and invested in a portfolio of securities. The mutual fund shareholder, like the Flexible Fund investor, may redeem his interest at any time and receive in cash the value of his proportionate share of the underlying portfolio. The principal aim of the mutual fund shareholder, like that of the Flexible Fund participant, is to invest in the securities markets by entrusting his capital to the company's management with the expectation that its efforts will result in a profit to him.

An examination of respondent's own sales literature demonstrates quite vividly that the "Flexible Fund Annuity" is offered as a medium for investment in the stock market.[5] Thus, respondent's sales brochure (which is distributed to potential purchasers) describes the Fund as an "*opportunity* to share in the growth of our economy" (PX 3; JA II 11) and emphasizes the company's "full-time professional investment management" and its "investment policy" of investing "the major part [of the Fund] in com-

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[5] See *Securities and Exchange Commission* v. *C. M. Joiner Leasing Corp.*, 320 U.S. 344, 352-353, where this Court stated that in determining whether a particular document or offering is within the scope of the Securities Act, "[t]he test is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect. In the enforcement of an act such as this it is not inappropriate that promoters' offerings be judged as being what they were represented to be."

mon stocks" (PX 3; JA II 15). The brochure also discusses the "History of Common Stock Investments," which is graphically demonstrated with Dow-Jones Industrial Stock Averages and a diagram of "the rate at which money grows" (PX 3; JA II 16). Respondent's newspaper advertisements also emphasize "New Opportunity for Financial Growth" (PX 6; JA II 26). Its sales agents are equipped with flyers listing "FFA Investments," which highlight the diversification and quality of the investment portfolio and contain tables showing, for example, a 30-year accumulation totaling more than eight times the amount of the purchaser's payments into the Fund (PX 5; JA II 23, 25).

It is this opportunity to share in the growth of a portfolio of securities which distinguishes the Flexible Fund arrangement from a conventional annuity and which warrants the application of the securities laws. A conventional annuity is essentially a fixed-dollar obligation. The purchaser of such an annuity has a right to receive a fixed amount, and he is protected by a system of State insurance regulation designed to make certain that the insurance company will remain solvent and be able to meet such fixed obligations. Thus, traditional State insurance regulation of reserves and solvency provides meaningful protection to the holder of a conventional annuity, and it was presumably regarded by Congress as obviating the need for the type of protections afforded by the securities laws. The Flexible Fund participant, on the other hand, has an interest which fluctuates in accordance with the market performance of a port-

folio of securities. He has an opportunity to share in the growth of that portfolio and he bears the consequent investment risk. The historic functions of State insurance regulation have only slight relevance when applied to such an interest, while the disclosure and other protections of the securities laws are vital.

2. The courts below erred in concluding that the minimum guarantee provision of the contract in issue rendered it an exempt "insurance product." While it is true that this feature shifted a portion of the investment risk from the purchaser to respondent, it did not alter the essential nature of the transaction or remove the need for protecting investors through the disclosure and regulatory provisions of the securities laws. The guarantee actually accords an investor only the barest form of protection; at most he is assured that, over a long-term period, the value of his investment will not fall below the "net" amount he has paid into the Fund. But the guarantee gives him no yield or return on his investment during that time nor does it protect any interim appreciation in the value of his interest. An investor's interest in the Fund can ordinarily be expected to last 25 years,[6] and may continue for as long as 50 or 60 years.[7] During that period the accumulated value of his interest in the Fund may grow to several times the amount actually paid by him. He is afforded no protection by respondent against the gradual or sudden erosion of such growth; his only protection is a

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[6] See Brief for Appellee in the court of appeals, p. 2.

[7] PX 3; JA II 19.

"guarantee" that his "net" purchase payments will be refundable. And even as to this "guarantee" the court of appeals noted that respondent's own statistical studies (PX 17; JA II 111-113, JA I 64-73, 101) proved that "it is extremely unlikely that the Fund's investment experience will be so disastrous as to call the guarantee into effect" (pp. 20-21, *infra*). The disclosure and regulatory provisions of the 1933 and 1940 statutes were enacted to protect investors who might be subject to the risk of such losses as may occur here and not merely those who might suffer out-of-pocket losses.

Nor was the district court correct in concluding that the availability of a fixed annuity "which cannot be outlived" (JA I 106) at the contract's maturity rendered respondent's Fund contract an "insurance product." Respondent has simply attached a standard annuity to its open-end investment plan and given investors the option of purchasing that annuity with the fruits of the investment program. The "pay-out" portion of the "Flexible Fund Annuity" is clearly an "annuity contract" within the meaning of Section 3(a)(8) of the Securities Act of 1933, 15 U.S.C. 77c(a)(8), and the Commission has never contended otherwise. But that does not mean that the "pay-in" portion, which in every way other than the "minimum guarantee" resembles a mutual fund contract, can, by virtue of its combination with an "insurance product," be converted into an exempt "insurance contract."

3. The court of appeals' decision is particularly important to the administration of the federal securi-

ties laws because of the recent growth of the variable annuity business and the ease with which a seller of variable annuities can, under the decision below, avoid compliance with the 1933 and 1940 Acts.

The remarkable growth of the mutual fund industry in recent years, as witnessed by the fact that between the end of 1950 and the end of 1965 the assets of mutual funds grew from $2.5 billion to $35 billion and the number of mutual fund shareholders rose from 450,000 to 3.5 million,[8] has stimulated interest on the part of insurance companies and banks in offering to the public participations in a pool of equity securities as a medium of investment having the same primary economic function as a mutual fund. Insurance companies have done so through the sale of variable annuities. Their sale is now permitted in 29 States,[9] in a number of which the enactment of enabling statutes specifically authorizing their sale was necessary.[10] The growth of the variable annuity industry has been rapid. In the five-year period from the end of 1960 to the end of 1965, the assets of the variable contract accounts of annuity plans registered under the 1940 Act have in-

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[8] These are figures compiled by the Investment Company Institute covering its member companies. The asset figures appear in Wiesenberger, *Investment Companies* (1966 ed.), p. 20, and the shareholder figures appear in an Investment Company Institute publication, Investment Company News, June 1966, p. 4.

[9] *The Glow Gets Rosier for Variable Annuities,* Business Week, January 29, 1966, p. 76.

[10] *The Regulation of Variable Annuities—Pt. II,* Best's Insurance News—Life Edition, November 1965, pp. 52-56.

creased almost nine-fold, from $1,781,904 to $15,365,757.[11] Some of the nation's leading life insurance companies are entering the variable annuity field,[12] and, with respect to the type of variable plan involved in the instant case, it has recently been reported that in at least one State a number of the major companies have already filed contract forms covering the "flexible annuity." [13]

The effect of the decision below would be to permit insurance companies to sell shares in investment pools without complying with the statutes enacted by Congress for the protection of persons who purchase such shares. Almost any insurance company, including VALIC itself, could engage in the unregulated sale of such shares since it could easily add an option to take a fixed annuity at the maturity of the plan. The court of appeals candidly recognized (p. 21, *infra*) that there is no "substantial possibility" that respondent would have to make good on its guarantee,[14] so that this feature could also be readily added to any variable annuity. We submit that, contrary

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[11] One company which was in existence in 1960 did not register until 1963. If the assets of this company were included in the 1960 figure, the total for that year would be $2,436,181.

[12] *The Glow Gets Rosier for Variable Annuities, supra,* note 9.

[13] *The Variable Dollar Frontier Revisited,* Best's Insurance News—Life Edition, July 1966, pp. 14, 18.

[14] Presumably the Nebraska Insurance Commissioner would not have permitted the guarantee unless he also was satisfied that it would not result in the invasion of ordinary policyholders' surplus for the exclusive benefit of Flexible Fund participants.

to the view of the court of appeals, this Court's decision in *VALIC* does not sanction such a result. In any event, whether or not it does is an important question in the administration of the federal securities laws which this Court can and should resolve.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted.

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Solicitor General.

NATHAN LEWIN,
Assistant to the Solicitor General.

PHILIP A. LOOMIS, JR.,
General Counsel,

WALTER P. NORTH,
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Securities and Exchange Commission.

AUGUST 1966.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19382

SECURITIES AND EXCHANGE COMMISSION, APPELLANT

v.

UNITED BENEFIT LIFE INSURANCE COMPANY, APPELLEE

Appeal from the United States District Court for the District of Columbia

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Decided March 10, 1966

Mr. Walter P. North, Associate General Counsel, with whom *Mr. Philip A. Loomis, Jr.*, General Counsel, Securities and Exchange Commission, was on the brief, for appellant. *Mr. Robert L. McCloskey*, Attorney, Securities and Exchange Commission, also entered an appearance for appellant.

Mr. Daniel J. McCauley, Jr., of the bar of the Supreme Court of Pennsylvania, *pro hac vice*, by special leave of court, with whom *Mr. M. Joseph Stoutenburgh* was on the brief, for appellee.

Mr. Joseph B. Levin, with whom *Mr. Marc A. White* was on the brief, for Investment Company Institute and National Association of Securities Dealers, Inc., as, *amici curiae*, urging reversal.

Before BAZELON, *Chief Judge*, EDGERTON, *Senior Circuit Judge*, and BURGER, *Circuit Judge*.

BAZELON, *Chief Judge:* The basic issue in this case is whether the Flexible Fund Annuity (FFA) issued by appellee United Benefit Life Insurance Company (United) is subject to federal regulation under the Securities Act of 1933 and the Investment Company Act of 1940. The Securities and Exchange Commission sought injunctive relief in the District Court against United on the grounds that the FFA contract is an unregistered "security" within the definition of the 1933 Act [1] and that the separate account, which United created in connection with the FFA, is an unregistered "investment company" within the meaning of the 1940 Act.[2] The District Court ruled that the FFA was an "insurance product," exempted from regulation under both Acts.[3] This appeal followed.

The FFA contract is framed as a deferred annuity policy. The policyholder agrees to pay United a specified gross premium periodically—*i.e.*, once a month—for a certain number of years. These premiums, less deductions for expenses, are accumulated by United during this deferred period in a separate account, known as Flexible Fund A. Unlike a conventional annuity, however, United does not guarantee to ac-

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[1] 48 Stat. 74 (1933), as amended, 15 U.S.C. § 77b(1) (1964).

[2] 54 Stat. 797 (1940) as amended, 15 U.S.C. § 80a-3 (1964).

[3] The Securities Act of 1933 contains an exemption for,

> "Any insurance or endowment policy or annuity contract or optional annuity contract . . . ." 15 U.S.C. § 77c(a) (8) (1964).

The District Court did not explicitly address itself to the Investment Company Act, but implicit in its decision is a finding that the Flexible Fund fell within the exemption of that Act for "any bank or insurance company . . . ." 15 U.S.C. § 80a-3 (c) (3) (1964).

cumulate net premiums at a specified rate of interest. Instead, United promises that the annuitant will be credited with a proportionate share of the profits which have resulted from the investment and reinvestment of the money in the Flexible Fund. In addition, United guarantees that at least 100 per cent of the net premiums wlil stand to the account of the annuitant throughout the deferred period if the investment experience of the Fund is unprofitable.[4] Cash surrender values equal to the accumulated value or minimum guarantee of the policy, and death benefits equal to the accumulated value or total gross premiums paid, whichever are higher, are also provided during the deferred period. At the maturity date specified in the policy, the annuitant is given the option of withdrawing the accumulated value of his policy in cash or of applying this value to a fixed annuity at rates prescribed in the initial contract. These rates are based upon a guaranteed 2½ per cent interest factor during the pay-out period, and once United begins payments to the annuitant the value of his policy is fixed; the profits made by the Fund are no longer accumulated in favor of the annuitant.

The result in this case, as both parties recognize, is controlled by the Supreme Court's recent decision in the *VALIC* case.[5] At issue in *VALIC* was a variable annuity policy which did not guarantee a fixed monetary value for the annuity either in the deferred or pay-out periods; its value at all times depended directly upon the investment experience of a pool of

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[4] This assumes that the deferred period is ten years or longer. If the deferred period is less than ten years, United only guarantees a percentage of the net premiums, ranging from 50 per cent in the first year to 90 percent in the ninth year.

[5] *SEC* v. *Variable Annuity Life Ins. Co.*, 359 U.S. 65 (1959).

securities, and the annuitant was, in effect, a direct participant in that pool. The question was whether this variable annuity was a "security" within the meaning of the 1933 and 1940 Acts or a "contract of insurance," which would be exempt from the Acts by their own terms, as well as by the provisions of the McCarran-Ferguson Act.[6] The majority of the Court found that the issuing company had assumed the mortality and expense risks usually associated with insurance. However, since the company did not guarantee a fixed monetary value for the policy, it placed "all of the investment risk on the annuitant, none on the company." Because the concept of insurance required "some investment risk-taking on the part of the company," the Court concluded that the variable annuity was not "insurance" and hence was subject to federal regulation.

In a concurring opinion, Mr. Justice Brennan explained in greater detail why the factor of investment risk was determinative. He pointed out that the purpose of the federal regulatory scheme had only minimal relevance to conventional insurance and annuity policies, which assumed the investment risk by creating fixed monetary obligations, and that state regulation of reserves and solvency offered truly meaningful protection to the policyholder. Mr. Justice Brennan reasoned that since the variable annuity in *VALIC* did not include substantial fixed dollar guarantees, federal regulation was quite relevant to the variable annuity contract, while state regulation was not; he therefore found the contract a "security," subject to the 1933 and 1940 Acts. In sum, both the majority and concurring opinions implicitly held that a company must bear a substantial part of

[6] 59 Stat. 33 (1945), as amended, 15 U.S.C. § 1011 (1964).

the investment risk associated with the contract, as well as the mortality and expense risks, in order to qualify its products as "insurance."

In most respects the FFA and the traditional deferred annuity are identical. Both guarantee interest on principal during the pay-out period; both assume all mortality and expense risks throughout the term of the contract; and both provide death benefits and cash surrender values.[7] The only meaningful difference between the FFA and the conventional deferred annuity is that the FFA does not guarantee interest on the accumulation of net premiums during the deferred period, but instead promises 100 per cent of net premiums plus a share in any profits made by the investment and reinvestment of the money in the Flexible Fund.

The SEC would minimize the similarities between the FFA and the deferred annuity first by asserting jurisdiction only over the deferred portion of the contract. The SEC then contends that the "investment risk" referred to in *VALIC* is the risk of not earning interest on the principal sum invested and that a contract is not "insurance" unless interest as well as principal is guaranteed. In support of this position the SEC emphasizes the extent to which the fortunes of the annuitant depend upon the investment policies and experience of the Fund and argues that the court should not treat the minimum guarantee of 100 per cent of net premiums as a substantial assumption of investment risk because it is extremely unlikely that

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[7] For a general description of the conventional deferred annuity see, *e.g.*, HUEBNER & BLACK, LIFE INSURANCE 104-16, 311-22, 329-30, 332-34 (6th ed. 1964) [hereinafter cited as HUEBNER & BLACK]; MEHR & OSLER, MODERN LIFE INSURANCE 79-103, 531-47 (3rd ed. 1961) [hereinafter cited as MEHR & OSLER].

the Fund's investment experience will be so disastrous as to call the guarantee into effect.

We note initially that adoption of the SEC's position that interest must be guaranteed during the deferred, as well as the pay-out, period would restrict annuity policies essentially to their current form. This result would contravene the explicit warning of the Supreme Court in *VALIC* where all nine Justices counseled against freezing the concept of annuity into a single pattern and argued that development and growth of insurance concepts should be allowed.[8] We also think that the SEC has misconceived the concept of "investment risk," as it is used in *VALIC*, by focusing on the likelihood of United's having to make good on its guarantee. Presumably no insurance company will undertake a guarantee in any policy if there is a substantial possibility that it will have to resort to surplus to satisfy that obligation.[9] Instead of denoting the company's risk, we think the concept refers to the annuitant's risk of losing money—principal, as well as anticipated earnings on principal—over the course of the investment period. By guaranteeing principal—100 per cent of net premiums—United has assumed a substantial part of this risk during the deferred period of the contract. Were the annuitant to invest on his own in the stock market, or even in so-called "safe" securities like bonds and

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[8] 357 U.S. at 68, 71, 75-76, 100-01.

[9] If an insurance company guarantees 2 per cent or 3 per cent interest, it does so only after it has made extensive studies which demonstrate to its satisfaction that there is no substantial probability that the funds associaed with the policy will fail to earn this amount over the duration of the contract. See, *e.g.*, HUEBNER & BLACK 296-300, 346-47, 388-90; MEHR & OSLER 590-93, 599.

mortgages, he would not have this guarantee, and his principal would never be absolutely secure.[10]

Finally, we reject the SEC's basic premise that the contract should be fragmented and the risk during the deferred period only should be considered. United's guarantee of principal and 2½ per cent interest during the pay-out period is a very substantial assumption of investment risk, which should not be ignored. Indeed, the *VALIC* opinions, as well as common sense, indicate that a challenged policy should be viewed as a whole in order to test its amenability to federal regulation. All told, United has assumed not only a substantial part, but by far the major part, of the investment risk over the duration of the entire policy.[11] The obligations of United under the FFA,

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[10] The SEC also urges that so long as the contract allows the annuitant any direct participation in the investment experience of the company, the policy must be subject to the federal regulatory scheme. This argument ignores completely the language and logic of *VALIC*, which contemplated a test based on the substantiality of the investment risk assumed by the company. See 359 U.S. at 71-73, 85, 89. A related objection to this argument is the effect that it would have upon the participating annuity, which the SEC concedes is exempt from federal regulation. The participating annuity clearly provides, and is intended to provide, that the annuitant will participate directly, even if minimally, in the investment experience of the company. See, *e.g.*, HUEBNER & BLACK 387-98; MEHR & OSLER 598-605; 614-20.

[11] The substantiality of the investment risk which United assumes in the FFA is even more apparent when that policy is compared with a participating annuity. In the latter, the interest factor during the deferred period is deliberately set quite low so as to assure dividends; and while dividends are in theory discretionary, in practical terms they must be declared regularly or the company will lose too much business. In effect, a participating policy promises, in part, a smaller interest guarantee in return for the opportunity to share in

unlike those of the variable annuity, are stated, in large part, in terms of guaranteed dollar amounts; there is a substantial and meaningful "floor" to the FFA policy. We therefore conclude that the FFA is an "insurance" contract and as such beyond the scope of federal regulation under the 1933 and 1940 Acts.[12] The judgment of the District Court is

Affirmed.

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greater interest when that is earned. See, *e.g.*, HUEBNER & BLACK 387-402; MEHR & OSLER 598-605, 614-20. For this reason the FFA can be regarded as an extension or development of the concept of participating insurance.

[12] The SEC finally contends that the case should be reversed because of the trial court's rulings on admission of evidence. Whether or not these rulings were correct, we don't think they affected "substantial justice." FED.R.CIV.P. 61.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1965

No. 19,382

[Filed March 10, 1966.]

SECURITIES AND EXCHANGE COMMISSION, APPELLANT

v.

UNITED BENEFIT LIFE INSURANCE COMPANY, APPELLEE

Appeal from the United States District Court for the District of Columbia

Before: Bazelon, Chief Judge, Edgerton, Senior Circuit Judge, and Burger, Circuit Judge.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Chief Judge Bazelon

Dated: March 10, 1966

APPENDIX C

STATUTES INVOLVED

1. The Securities Act of 1933 (48 Stat. 74, as amended, 15 U.S.C. 77a, *et seq.*) provides in pertinent part:

DEFINITIONS

Sec. 2. When used in this title, unless the context otherwise requires—

(1) the term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

* * * *

EXEMPTED SECURITIES

Sec. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

* * * *

(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commission-

er, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

* * * *

2. The Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. 80a-1, *et seq.*) provides in pertinent part:

GENERAL DEFINITIONS

Sec. 2(a) When used in this title, unless the context otherwise requires—

* * * *

(8) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his capacity as such.

* * * *

(17) "Insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

* * * *

(21) "Issuer" means every person who issues or proposes to issue any security, or has outstanding any security which it has issued.

* * * *

(27) "Person" means a natural person or a company.

* * * *

DEFINITION OF INVESTMENT COMPANY

Sec. 3.(a) When used in this title, "investment company" means any issuer which—

(1) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

* * * *

(3) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

* * * *

(c) Notwithstanding subsections (a) and (b), none of the following persons is an investment company within the meaning of this title:

* * * *

(3) Any bank or insurance company; * * *

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IN THE

Supreme Court of the United States

October Term, 1966.

No. 428.

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

UNITED BENEFIT LIFE INSURANCE COMPANY.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

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LIFE INSURANCE FACT BOOK, 1966 (Institute of Life Insurance), p. 22 20

IN THE

Supreme Court of the United States

OCTOBER TERM 1966

No. 428

SECURITIES AND EXCHANGE COMMISSION,
Petitioner

v.

UNITED BENEFIT LIFE INSURANCE COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and conclusions of law and order of the United States District Court for the District of Columbia are unreported, and appear in Volume I of the two volume Joint Appendix (JA I, 105-107) filed in the United States Court of Appeals for the District of Columbia Circuit. The opinion of the Court of Appeals is reported at 359 F. 2d 619, and a copy thereof is appended to the Petition as Appendix A (App. A of Pet. 16-23).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

COUNTERSTATEMENT OF THE QUESTION PRESENTED

Whether a deferred annuity contract issued by a major life insurance company, in which contract the obligations of the company are stated in large part in terms of guaranteed dollar amounts, and which contract, as found by the court below, imposes upon the company for its entire duration, (a) all of the mortality risk, (b) all of the expense risk, and (c) not only a substantial part, but by far the major part of the investment risk associated with the annuity—is an "insurance" product exempt as such from federal regulation, and not a security subject to federal regulation, within the test established in this Court's decision in *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Company of America,* 359 U.S. 65 (1959), under which to qualify its products as "insurance" an insurance company must bear not only the mortality and expense risks associated with the contract but a substantial part of the investment risk.

STATUTES INVOLVED

The pertinent provisions of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. 77a, *et seq.*) and of the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. 80a-1, *et seq.*) are set forth in Appendix B of the Petition. The provisions of Section 2(b) of the McCarran-Ferguson Insurance Regulation Act (59 Stat. 34, 15 U.S.C. 1012(b)) are set forth in Appendix A, *infra,* 23.

COUNTERSTATEMENT OF THE CASE

The Securities and Exchange Commission (SEC) petitions for review of the judgment of the United States Court of Appeals for the District of Columbia Circuit entered March 10, 1966 (App. B of Pet. 24), which affirmed the judgment of the United States District Court for the District of Columbia, entered April 5, 1965 (JA I, 107), dismissing on its merits the SEC complaint for an injunction (JA I, 5-21) filed on October 1, 1962, against respondent United Benefit Life Insurance Company (United) seeking to enjoin United from issuing its Flexible Fund Annuity (FFA).

United was incorporated in 1926 under the insurance laws of the State of Nebraska (JA I, 105), as a legal reserve, stock, life insurance company.[1] United is a life insurance company subject to the supervision of the Director of Insurance of the State of Nebraska and of the insurance commissioner (or similar official) of the District of Columbia and of the States [2] in which it is authorized to do business (JA I, 105).

This Court's controlling decision in Securities and Exchange Commission v. Variable Annuity Life Insurance Company of America

As the court below pointed out in its opinion (App. A of Pet. 18), "The result in this case, as both parties recognize, is controlled by the Supreme Court's recent

1. As of December 31, 1963, United had assets exceeding $458 million (Pl. Ex. 7; JA II, 38); capital and surplus exceeding $60 million (*id.*, 39); and contracts in force with face amount benefits in excess of $3.2 billion (*id.*, 48).

2. United is authorized to transact business in all States of the United States except New York (Pl. Ex. 7; JA II, 54).

decision" in *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Company of America*, 359 U.S. 65 (1959) (*VALIC*). In the *VALIC* case the question before this Court was whether the issuers of variable annuities were issuing a "security" within the meaning of the Securities Act of 1933 and Investment Company Act of 1940, or whether they were issuing "contracts of insurance" (*id.* at 68), which would be exempt from these Acts by their own terms, as well as by the provisions of the McCarran-Ferguson Act. A majority of this Court [3] found that the variable annuity companies had assumed the mortality and expense risks usually associated with insurance; however, since these companies did not guarantee that ". . . at least some fraction of the benefits will be payable in fixed amounts . . ." the variable annuity placed ". . . all of the investment risk on the annuitant, none on the company . . .". Because the federal [4] concept of insurance requires ". . . some investment risk-taking on the part of the company . . .",

3. Mr. Justice Douglas—speaking also for the Chief Justice, and Justices Black, Brennan and Stewart—wrote the opinion of the Court. Mr. Justice Brennan concurred in a separate opinion (359 U. S. at 73-93), in which Mr. Justice Stewart joined. Mr. Justice Harlan—whom Justices Frankfurter, Clark and Whittaker joined—dissented in a separate opinion (359 U. S. at 93-101). The dissenters held that the variable annuity is an "insurance contract", subject only to state regulation.

4. This Court noted in *VALIC* that how the States may have ruled on the variable annuity was "not decisive" since the meaning of "insurance" or "annuity" under the federal securities laws is a "federal" question (359 U. S. at 69). As of October 1962, the FFA contract issued by United had been approved by the insurance commissioners of 17 States (JA I, 35), and United had issued 132 FFA policies (JA I, 97).

this Court concluded that the variably annuity was not "insurance", and hence was subject to federal regulation. This Court said (359 U.S. at 70-72, footnotes omitted):

> The difficulty is that, absent some guarantee of fixed income, the variable annuity places all the investment risks on the annuitant, none on the company. The holder gets only a *pro rata* share of what the portfolio of equity interests reflects —which may be a lot, a little, or nothing. We realize that life insurance is an evolving institution. Common knowledge tells us that the forms have greatly changed even in a generation. And we would not undertake to freeze the concepts of "insurance" or "annuity" into the mold they fitted when these Federal Acts were passed. But we conclude that the concept of "insurance" involves some investment risk-taking on the part of the company. The risk of mortality, assumed here, gives these variable annuities an aspect of insurance. Yet it is apparent, not real; superficial, not substantial. In hard reality the issuer of a variable annuity that has no element of a fixed return assumes no true risk in the insurance sense. . . . We deal with a more conventional concept of risk-bearing when we speak of "insurance." For in common understanding "insurance" involves a guarantee that at least some fraction of the benefits will be payable in fixed amounts. . . . The companies that issue these annuities take the risk of failure. But they guarantee nothing to the annuitant except an interest in a portfolio of common stocks or other equities—an interest that has a ceiling but no floor. There is

no true underwriting of risks, the one earmark of insurance as it has commonly been conceived of in popular understanding and usage.

The decision of the District Court

The District Court granted United's motion to dismiss the action made at the conclusion of the SEC's case (JA I, 103); holding that United's deferred annuity contract in question, the FFA [5] is "an insurance product within the interpretation of *VALIC*" (JA I, 107). The District Court held that within the meaning of this Court's decision in the *VALIC* case, United had assumed the investment risk involved in providing "a guaranteed basic fixed dollar monthly equal retirement income, after the maturity date has been reached, which cannot be outlived" (finding of fact no. 5 and conclusion of law no. 3; JA I, 105-106).

The decision of the Court of Appeals

The Court of Appeals affirmed the judgment of the District Court; it concluded under this Court's *VALIC* decision "that the FFA is an 'insurance' contract and as such beyond the scope of federal regulation under the 1933 and 1940 Acts" (App. A of Pet. 23).

The court below found in its opinion (App. A of Pet. 20) that in most respects the traditional deferred annuity and the FFA are identical; that the only "meaningful difference" between the two is that the FFA does not guarantee interest on the accumulation of net premiums during the deferred period, but in-

5. The contract in question is denominated the "Annual Premium Flexible Fund Retirement Annuity" (Pl. Ex. 2; JA II, 2). We refer to the contract, as did the court below, as the "FFA" (Flexible Fund Annuity).

stead promises 100 per cent of net premiums *plus* the difference between 100 per cent of net premiums and the accumulated cash value of the FFA, if higher. In this latter respect the court below said that the FFA "can be regarded as an extension or development of the concept of participating insurance", since the FFA, like a participating policy, gives the opportunity to share in greater interest when that is earned (App. A of Pet. 22-23, n. 11).

The essential provisions of the FFA were summarized in the opinion of the court below, as follows (App. A of Pet. 20, footnote omitted):

> In most respects the FFA and the traditional deferred annuity are identical. Both guarantee interest on principal during the pay-out period; both assume all mortality and expense risks throughout the term of the contract; and both provide death benefits and cash surrender values. The only meaningful difference between the FFA and the conventional deferred annuity is that the FFA does not guarantee interest on the accumulation of net premiums during the deferred period, but instead promises 100 per cent of net premiums plus a share in any profits made by the investment and reinvestment of the money in the Flexible Fund.

The reference to the "Flexible Fund" in the foregoing quotation is to "Flexible Fund A Account" (Pl. Ex. 2; JA II, 3), a separate account maintained by United under Nebraska law[6] in connection with the FFA

6. Section 44-310.06 of Revised Statutes of Nebraska, 1963 Cumulative Supplement, provides, in part, that a life insurance company may allocate to one or more separate accounts, pursuant to the

policies which have been issued. A separate account is an "operational manner of proceeding whereby a life insurance company is able to perform its legally incurred obligations to a special segment of its policyholders".[7]

The guaranteed dollar amount provisions of the FFA

The FFA is a deferred annuity contract; it is a "fixed annuity" within the meaning of this Court's *VALIC* opinion where the Court said that a fixed annuity is one which offers "the annuitant specified and definite amounts beginning with a certain year of his or her life" (359 U.S. at 69). The FFA—as a fixed annuity—thus enables the annuitant—as the variable annuity does not—to "look forward to a fixed monthly or yearly amount in his advancing years" (359 U.S. at 70).

The specified and definite amounts which United will pay to the annuitant commencing on the maturity

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provisions of applicable contracts, any amounts which are paid to such company in connection with an annuity; and provides also that "amounts allocated by a life insurance company to separate accounts in the exercise of the power granted . . . shall be owned by the company, and the company shall not be, or hold itself to be, a trustee in respect to such amounts."

7. *A Symposium on Segregated Accounts,* PROCEEDINGS OF THE FIFTY-FOURTH ANNUAL MEETING OF THE LEGAL SECTION OF THE AMERICAN LIFE CONVENTION, p. 264. The National Association of Insurance Commissioners requires all life insurance companies to report all transactions involving separate accounts. Therefore, United's Annual Statement for 1962 includes Form 1-S (Pl. Ex. 8(b); JA II, 67-92) which relates to the separate account used in connection with FFA policies to compute their accumulated cash values. Form 1-S relates to transactions involving the separate account only, and the many other aspects of United's operations which relate to FFA policies are reflected throughout Form 1 of United's Annual Statement (Pl. Ex. 8(a); JA II, 35-66).

date selected by the annuitant depend, in part—as in the case of any deferred annuity—upon the cash value of the annuity at maturity plus an assumed interest factor during the pay-out period. Table 1 of the FFA (Pl. Ex. 2; JA II, 5), is a table of monthly payments to be received for the lifetime of the annuitant under specified options for each $1000. of cash value available on the maturity date; the table is identical with that embodied in United's traditional deferred annuity as issued in 1962 when suit was begun (see p. 11, n. 10 *infra*); both tables are predicated upon identical mortality and interest (2½ per cent) assumptions during the pay-out period.

In the hypothetical case of an FFA issued to a male annuitant at age 35, with a monthly premium of $100.; the annuitant having elected Option A, providing for a lifetime retirement income with 120 months guaranteed (Pl. Ex. 2; JA II, 5)—the annuitant is guaranteed that he will receive after maturity each month the specified and definite amounts which will be provided by amounts of the guaranteed minimum cash value, which amounts are calculable from the policy.

The guaranteed minimum cash value of the FFA consists—after the 10th policy year—of 100 per cent of net premiums, and prior thereto of an increasing percentage [8] of the net premiums [9] which have been

8. The FFA provides that the guaranteed minimum cash value shall be determined by applying the appropriate percentage to the sum of the net premiums which have been paid; these percentages range from 50 per cent of the premiums paid for the 1st year, to 90 per cent after premiums have been paid for 9 years, and to 100 per cent after premiums have been paid for 10 or more years (Pl. Ex. 2; para. 9; JA II, 3). Since the FFA is an instrument of long-range retirement planning, United will not issue an FFA unless the maturity date is at least 10 years from the date of issue (Pl. Ex. 3; JA II, 19).

9. (Footnote appears on succeeding page.)

paid by the annuitant. In the foregoing hypothetical case, with an assumed maturity date at the end of the 25th policy year; *i.e.*, at male age 60, the annuitant would receive for life after the maturity date monthly payments of $154.13. The amount of the monthly payment is calculated by determining the monthly payment under Table 1 in the FFA (Pl. Ex. 2; JA II, 5) for each $1000. of guaranteed minimum cash value (Pl. Ex. 2, para. 9; JA II, 3) for a male age 60. In the foregoing hypothetical case the guaranteed minimum cash value at the end of the 25th policy year would be $27,474.; and the amount payable per each $1000. of such cash value under the table would be $5.61 ($27.474 \times 5.61 = 154.13$).

The guaranteed minimum cash values at the end of certain policy years of the FFA under the assumptions of the foregoing hypothetical case, and the lifetime monthly income payments provided thereby, are stated in a table below; there is also given, by way of comparison, the cash values at the end of the same policy years and the lifetime monthly income payments

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9. Net premiums are defined in the FFA as the following percentages of the premiums paid for respective policy years (Pl. Ex. 2, para. 7; JA II, 3):

Policy Year	*Percentage of Premiums Paid*
1	50.0
2-10	90.5
11 and subsequent	95.0

The expense "loadings" built into the premium for the FFA, therefore, amount to: 50.0 per cent in the 1st year; 9.5 per cent in years 2-10; and 5.0 per cent in the 11th year and thereafter.

provided thereby in United's traditional deferred annuity,[10] under the same assumptions:

End of Policy Year	United's FFA Deferred Annuity: Minimum Guaranteed Cash Value	United's FFA Deferred Annuity: Monthly Payment For Life	United's Traditional Deferred Annuity: Guaranteed Cash Value	United's Traditional Deferred Annuity: Monthly Payment For Life
10	$10,374.00	$ 42.43	$11,561.08	$ 47.28
15	16,074.00	72.33	18,749.25	84.37
20	21,774.00	109.09	26,895.08	134.74
25	27,474.00	154.13	36,102.40	202.53

In addition to the provisions for the guaranteed minimum cash value and for the guaranteed lifetime income provided thereby, the FFA obligates United upon the death of the annuitant during the deferred period to pay to the annuitant's beneficiary as a guaranteed minimum death benefit—100 per cent of the sum of the premiums which have been paid by the annuitant (Pl. Ex. 2; JA II, 2).

The accumulated cash value benefits of the FFA

The cash value of the FFA during the deferred period can never be less than the guaranted minimum cash value. The FFA, however, makes provision for an accumulated cash value—(Pl. Ex. 2, para. 8; JA II, 3) which may provide benefits in addition to the guaranteed minimum cash value. The accumulated cash value is based upon the monthly accumulation

10. The values given in the chart for United's traditional deferred annuity are predicated upon the form of that contract (Form 523, Series 74L) as issued at the time the SEC complaint was filed herein in October, 1962. The record contains a newer series of the same contract (Form 523, Series 140L) (Pl. Ex. 7; JA II, 27-34), which liberalized its interest assumptions, and modernized its mortality assumptions.

rate[11] (Pl. Ex. 2, para. 12; JA II, 3), which rate in turn depends upon the value of United's assets acquired with funds allocated by it to the separate account.

The pay-out provisions of the FFA—like those of United's traditional deferred annuity—are predicated, in part, upon an accumulation rate consisting of a fixed interest factor (2½ per cent). During the deferred period, however, the FFA provides for an accumulation rate which does not consist of a fixed and limited interest factor, but of an empiric accumulation rate—the monthly accumulation rate—under which net premiums are accumulated at a rate which reflects actual investment results. This empiric accumulation rate, the court below held, "can be regarded as an extension or development[12] of the concept of participating insurance" (App. A of Pet. 23, n. 11).

As noted above, the cash value of the FFA can never be less than the guaranteed minimum cash value. The FFA thus protects the annuitant's "principal" *i.e.* 100 per cent of the net premiums, and thus guarantees to the annuitant the lifetime monthly payments which will be provided for by the guaranteed minimum cash value. If, however, on the maturity date selected by the annuitant the accumulated cash value is higher than the guaranteed minimum cash value—as a result of favorable investment results achieved by United dur-

11. A summary of the arithmetical steps involved in calculating the monthly accumulation rate appears in the record (JA I, 80-81).

12. The FFA differs from the usual participating annuity in that, in most favorable fashion to the annuitant, United agrees that the annuitant will receive the full benefit of favorable investment results over the deferred period, limiting its charges to a reserve for possible income taxes of United and to the actuarial margin of .083 per cent per month.

ing the deferred period—then the annuitant will receive not merely the lifetime monthly payments provided for by the guaranteed minimum cash value, but *additional* amounts of lifetime monthly payments above the guaranteed minimum level—which additional amounts will be provided for by the additional amount of accumulated cash value over the guaranteed minimum cash value. In the foregoing hypothetical case, the annuitant would receive in addition to his lifetime monthly payment of $154.13—a payment of an additional $5.61 per month for each $1000. of accumulated cash value above the guaranteed minimum cash value, as per Table 1 of the FFA (Pl. Ex. 2; JA II, 5).[13]

The FFA provides—as does United's traditional deferred annuity—that the annuitant has the *option* upon the maturity date (or earlier) to surrender the contract, thus terminating his contractual relationship, and to receive the cash value of the FFA. If the annuitant exercises this option[14] to terminate his FFA contract, he will receive the guaranteed minimum cash value *plus* the difference between the guaranteed minimum cash value and the accumulated cash value—if

13. The lifetime monthly payments per each $1000. of cash value provided for by Table 1 in the FFA—as well as the mortality, expense and interest assumptions upon which the payments are based—are fixed from the moment the FFA policy is issued. No matter how long the duration of the FFA contract they may not be changed by United adversely to the annuitant.

14. It is significant that Section 3(a)(8) of the Securities Act of 1933 (App. C of Pet. 25) provides, in pertinent part, that the Act shall *not* apply to "any insurance or endowment policy or annuity contract or *optional annuity contract* * * *" (emphasis added). The FFA is an "optional annuity contract" within the meaning of the foregoing exemption provision of the Act, as are most deferred annuities being issued by United States life insurance companies today.

the latter is higher—in the form of a terminal dividend representing such difference.

Also, if the annuitant dies before the maturity date, his beneficiary will receive the amount of the guaranteed minimum death benefit (the sum of the premiums which have been paid) *plus* the difference between that minimum amount and the accumulated cash value—if the latter is higher—in the form of a terminal dividend representing such difference.

REASONS FOR DENYING THE WRIT

The court below noted in its opinion that "The result in this case, as both parties recognize, is controlled by the Supreme Court's recent decision in the *VALIC* case" (App. A of Pet. 18). This Court in *VALIC*, decided an important[15] question of Federal law and after the fullest presentation of all possible contentions.[16] The SEC has not advanced any reason in the Petition why this Court should once again cover the ground so recently and elaborately covered in its *VALIC* decision. The SEC Petition is obscure,[17] but it must be presumed that the sole proffered ground of review is that the decision of the court below allegedly *conflicts* with this Court's decision in the *VALIC* case; that the court below allegedly misconstrued or misap-

15. Certiorari was granted in *VALIC* "because of the importance of the question presented" (359 U. S. at 66).

16. Briefs were filed by the two respondent variable annuity companies and by the two petitioners, SEC and National Association of Securities Dealers, Inc.

17. The SEC at one point in the Petition asserts that the court below held "that *VALIC* is inapplicable . . . (Pet. 7); at another point the SEC asserts "We submit that, contrary to the view of the court of appeals, this Court's decision in *VALIC* does not sanction such a result" (Pet. 15).

plied this Court's *VALIC* decision. However, such alleged conflict is non-existent. The decision of the court below is manifestly correct.

In the light of this Court's *VALIC* decision and the SEC's concessions at the trial[18] no other result could really have been reached. Since this Court's *VALIC* decision already sets forth a clear test for determining whether or not an insurance company is issuing an "insurance contract" exempt from regulation under the federal securities laws, there is no need for review by this Court. The court below in a careful opinion correctly understood this test and correctly applied it to the particular provisions of the FFA contract before it.

I. The court below correctly interpreted this Court's VALIC decision

After a review of this Court's opinions in *VALIC*, the court below held that: "In sum, both the majority and concurring opinions implicitly held that a company must bear *a substantial part* of the investment risk associated with the contract, as well as the mortality and expense risks in order to qualify its products as "insurance" (emphasis added) (App. A of Pet. 19-20).

Further, answering the SEC contention made in the court below—which is repeated in the Petition—that "so long as the contract allows the annuitant *any* direct participation in the investment experience of the company, the policy *must* be subject to the fed-

18. In the District Court the SEC conceded herein that there is no "floor" to the variable annuity (JA I, 51) while there is a "floor" in the FFA. The SEC also conceded that the holder of an FFA "can't wind up with nothing", since the guaranteed minimum cash value will always provide a lifetime income (JA I, 52).

eral regulatory scheme" (emphasis added), the court below said (App. A of Pet. 22, n. 10):

> . . . This argument ignores completely the language and logic of *VALIC*, which contemplated *a test based on the substantiality of the investment risk assumed by the company.* See 359 U.S. at 71-73, 85, 89. . . . (Emphasis added).

The court below was indisputably correct in interpeting this Court's *VALIC* decision as setting forth a test based upon the "substantiality of the investment risk assumed by the company".

II. The court below correctly applied the test set forth in this Court's VALIC decision to the FFA

The court below applied this Court's *VALIC* test —*i.e.* that an insurance company must bear "a substantial part" of the investment risk associated with the annuity policy—to the contract in question, and held correctly that United has assumed in the FFA "not only a *substantial part,* but by far the *major part,* of the investment risk over the duration of the entire policy." (Emphasis added) (App. A. of Pet. 22).

A. The court below found (App. A of Pet. 20) that in most respects the FFA and the traditional deferred annuity are identical. Both are premised upon a fixed interest accumulation factor during the entire pay-out period. Both assume all mortality and expense risks [19] throughout the duration of the entire contracts. Both provide death benefits and cash sur-

19. The premium expense "loadings" of the FFA are identical with those of United's traditional deferred annuity. In the case of the FFA a so-called "actuarial margin" equal to .083 per cent of the value of the investments allocated to the separate account is transferred each month during the deferred period from the separate

render values during the deferred periods of the contracts.

The court below held that the "only meaningful difference" between the FFA and the traditional deferred annuity is that the FFA—during the deferred period only [20]—is not based upon a fixed interest assumption on the accumulation of net premiums during the deferred period, but instead promises 100 per cent of net premiums—the guaranteed minimum cash value —*plus* the difference between such guaranteed minimum cash value and the accumulated cash value—if the latter is higher.

B. The contentions made by the SEC in the court below—all of which are repeated in the Petition—are summarized in the opinion of the court below, as follows (App. A of Pet. 20-21):

> The SEC would minimize the similarities between the FFA and the deferred annuity first by

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account to United's general funds. United guarantees that the only expense charges in connection with the FFA over the entire duration of the contract will be (a) the amount of expense premium "loadings", (b) the monthly "actuarial margin" charge of .083 per cent, and (c) a reserve for United's income taxes, if any. If United's actual expenses over the entire duration of the FFA contract exceed these allowances United will bear the loss.

20. The SEC concedes (Pet. p. 12) that in the pay-out period the FFA is clearly an "insurance product." As to the SEC contention that the FFA contract should *not* be construed as a whole and in its entirety, the court below said (App. A of Pet. 22):

> . . . we reject the SEC's basic premise that the contract should be fragmented and the risk during the deferred period only should be considered. United's guarantee of principal and 2½ per cent interest during the pay-out period is a very substantial assumption of investment risk, which should not be ignored. Indeed, the *VALIC* opinions, as well as common sense, indicate that a challenged policy should be viewed as a whole in order to test its amenability to federal regulation. . . .

asserting jurisdiction only over the deferred portion of the contract. The SEC then contends that the "investment risk" referred to in *VALIC* is the risk of not earning interest on the principal sum invested and that a contract is not "insurance" unless interest as well as principal is guaranteed. In support of this position the SEC emphasizes the extent to which the fortunes of the annuitant depend upon the investment policies and experience of the Fund and argues that the court should not treat the minimum guarantee of 100 per cent of net premiums as a substantial assumption of investment risk because it is extremely unlikely that the Fund's investment experience will be so disastrous as to call the guarantee into effect.

Each of the foregoing contentions is without merit; each was properly rejected by the court below, as follows:

(1) The court below pointed out that the adoption of the SEC's position—that interest *must* be guaranteed during the deferred, as well as during the payout period—would freeze and restrict annuity policies essentially to their current form. This result would contravene—said the court below—the explicit warning of this Court in *VALIC* where all[21] the members of this Court counseled against "freezing" the concept of annuity into a single pattern, and held that development and growth of insurance concepts should be allowed (App. A of Pet. 21).

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21. In *VALIC* Mr. Justice Douglas said in the Court's opinion:

> We start with a reluctance to disturb the state regulatory schemes that are in actual effect, either by displacing them or by superimposing federal requirements on transactions that are tailored to meet state requirements. . . . (359 U. S. at 68).

(2) The court below held that by guaranteeing the annuitant's "principal"—100 per cent of net premiums paid—United had assumed in the FFA a "substantial part" of the investment risk during the deferred period [22] of the contract (App. A of Pet. 21). The court below held also that by guaranteeing principal and interest (at 2½ per cent) during the pay-out period of the contract, United had also undertaken "a very substantial assumption of investment risk" (*id.*

. . . And we would not undertake to freeze the concepts of "insurance" or "annuity" into the mold they fitted when these Federal Acts were passed. . . . (*Id.* at 71).

Mr. Justice Brennan said in his concurring opinion:

. . . the point is not that if the insurance industry seeks to retain its exemption, it must limit itself to the forms of policies and contracts in effect in 1933 and 1940. . . . (*Id.* at 76).

Mr. Justice Harlan said in his dissenting opinion:

. . . The Court is agreed that we should not "freeze" the concept of insurance as it then existed. By the same token we should not proceed on the assumption that the thrust of state regulation is frozen. As the insurance business develops new concepts the States adjust and develop their controls. This is in the tradition of state regulation and federal abstention. . . . (*Id.* at 101).

22. Conceding that United bears the full investment risk associated with the pay-out portion of the FFA, the SEC contends that United's guarantee of 100 per cent of net premiums during the deferred period accords "only the barest form of protection" (Pet. 11). As the court below cogently pointed out, this is a guarantee of the annuitant's "principal", and "[w]ere the annuitant to invest on his own in the stock market, or even in so-called 'safe' securities like bonds and mortgages, he would not have this guarantee, and his principal would never be absolutely secure" (App. A of Pet. 21-22). If on the maturity date the value of United's investments associated with the FFA contract should fall to *0*, the FFA holder would, nevertheless, receive for life the monthly payments provided for by the guaranteed minimum cash value.

p. 22). The court below, therefore, properly concluded that:

> . . . All told, United has assumed not only a substantial part, *but by far the major part* of the investment risk over *the duration of the entire policy*. . . . (Emphasis added) (App. A. of Pet. 22)

Further, making direct application of language of this Court's majority opinion in *VALIC* to the instant contract, the court below held (App. A of Pet. 22-23):

> . . . The obligations of United under the FFA, unlike those of the variable annuity, are stated, in large part, in terms of *guaranteed dollar amounts;* there is a *substantial* and *meaningful "floor"* to the FFA policy. . . . (Emphasis added.)

(3) As the court below pointed out (App. A of Pet. 22, n. 10) the SEC concedes that a *participating* annuity is exempt from federal regulation; the participating annuity, however, provides, and is intended to provide, that "the annuitant will participate directly, even if minimally, in the investment experience of the company." The court below further pointed out that "the substantiality of the investment risk which United assumes in the FFA is even more apparent when the policy is compared with a participating annuity[23] (App. A of Pet. 22, n. 11):

> . . . In the latter [the participating annuity], the interest factor during the deferred period is

23. The passing on by life insurance companies of the benefits of favorable investment experience has been traditional in the United States. In fact, of the total amount of all types of life insurance in force with United States life companies at the end of 1965, participating insurance accounted for 64 per cent. LIFE INSURANCE FACT BOOK, 1966 (Institute of Life Insurance), p. 22.

deliberately set quite low so as to assure dividends; and while dividends are in theory discretionary, in practical terms they must be declared regularly or the company will lose too much business. In effect, a participating policy promises, in part, a smaller interest guarantee in return for the opportunity to share in greater interest when that is earned. See *e.g.* HUEBNER & BLACK 387-402; MEHR & OSLER 598-605, 614-20. For this reason the FFA can be regarded as an extension or development of the concept of participating insurance.

C. The FFA—as is any deferred annuity—is an instrumentality of long range retirement planning, and the annuitant acquires the FFA to obtain the guaranteed lifetime income provided thereby. The fact that it contains, during the deferred period, an accumulation rate which may provide the annuitant with bonus benefits—if long range trends in the economy are favorable—while protecting the annuitant's "principal" does not convert such a deferred annuity contract into a security. The court below was clearly correct in so holding.

CONCLUSION

For the foregoing reasons, this cause should not be reviewed by the Court, and the Petition for a writ of certiorari should be denied.

Respectfully submitted,

DANIEL J. MCCAULEY, JR.,
MORRIS L. WEISBERG,
DONALD F. EVANS,
Counsel for Respondent.

Dated: September, 1966

APPENDIX A

The McCarran-Ferguson Insurance Regulation Act (Act of March 9, 1945; c. 20; 59 Stat. 33, as amended; 15 U.S.C. 1011-1015) provides in Section 2(b) (59 Stat. 34; 15 U.S.C. 1012(b)):

> (b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided,* That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 428

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

UNITED BENEFIT LIFE INSURANCE COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION

In its brief in opposition respondent points out (pp. 4-5, 16) that, in holding in *VALIC* [1] that the variable annuity there involved was a "security" and not "insurance," this Court stressed that the company had assumed none of the investment risks, since it gave the annuitant no guarantee of any fixed income; and it argues that since it, unlike the company in *VALIC*,

[1] *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Co.*, 359 U.S. 65.

does assume some investment risk by virtue of its guarantee—a guarantee, however, upon which the court of appeals recognized there was no "substantial possibility" that the company would ever be liable (Pet. 21)—its "Flexible Fund Annuity" is an insurance contract.

The argument is a *non sequitur*. For the fact that a variable annuity in which the company assumes no investment risk is not an insurance contract does not prove the converse, namely, that a variable annuity in which the company does assume some investment risk is an insurance contract.

This Court has warned that "words of our opinions are to be read in the light of the facts of the case under discussion. * * * General expressions transposed to other facts are often misleading" (*Armour & Co.* v. *Wantock*, 323 U.S. 126, 133). The decision in *VALIC* rested on the narrow ground that, since "the concept of 'insurance' involves some investment risk-taking on the part of the company," an arrangement which "places all the investment risks on the annuitant, none on the company" (359 U.S. at 71) was not insurance. In view of that limited ruling, there was no occasion for the Court to reach, and it therefore did not decide, the converse of that proposition, which this case presents: Whether respondent's "Flexible Fund Annuity" is an insurance contract solely because the company assumes some investment risk. That question cannot be answered, as respondent would do, solely by reference to the language of the *VALIC* opinion. Rather, it involves the basic policy consideration that a purchaser of respondent's "Flex-

ible Fund Annuity" has the same need for the protections Congress provided for investors in the Securities Act of 1933 and the Investment Company Act of 1940 as the purchaser of the variable annuity involved in *VALIC*, and for the same reason: that he basically is being sold a participation in a pool of equity securities that he anticipates will increase in value. See the petition, pages 8-9.

Indeed, it is difficult to believe that Mr. Justice Brennan would have joined in the Court's opinion in *VALIC* (359 U.S. at 73) if that decision determined that the federal securities laws are inapplicable to the type of variable annuity here involved. For, as our petition demonstrates, the rationale of his concurring opinion (in which Mr. Justice Stewart joined) compels the conclusion that respondent's variable annuity is not an insurance contract exempt from the coverage of the federal securities laws.[2]

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[2] The flaw in respondent's reasoning is further shown by its attempt to analogize its flexible fund contract to a traditional participating annuity (Br. in opp., pp. 20-21), which concededly is an insurance contract under the federal securities laws. In a participating annuity, a portion of the annual premium may be returned to the purchaser as a "dividend." To be sure, the amount of such "dividend" may depend upon the success of the company's business during the preceding year. But such success primarily relates to the company's insurance operations—its mortality experience, operating expenses, etc.—and not, as in the present case, to increases in the value of its securities portfolio. Since the bulk of an insurance company's assets traditionally are invested in debt securities, the amount of the participating "dividends" reflects the success of the company's investment program largely in the sense that such "dividends" will be higher if the interest rate on such debt securities is higher than anticipated—and such

In short, *VALIC* did not decide the important question presented in this case—a question which, as shown in our petition, this Court should decide.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

PHILIP A. LOOMIS, JR.,
General Counsel,
Securities and Exchange Commission.

SEPTEMBER 1966.

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higher interest rates may well result not from the success of the company's investment program but from a change in interest rates generally. See Mehr and Osler, *Modern Life Insurance* (3d ed. 1961), pp. 570-571; Huebner and Black, *Life Insurance* (6th ed. 1964), pp. 294-300, 313-322, 387-390, 392; Maclean, *Life Insurance* (9th ed. 1962), pp. 61, 91-92, 142, 144-145, 154, 169-170, 350-351. See also the May 1965 issue of "The Tally of Life Insurance Statistics," a monthly publication of the Institute of Life Insurance, which reports that as of March 31, 1965, only 2.63 percent of the investments held by all United States life insurance companies consisted of common stocks. Moreover, to whatever extent the dividends may reflect the company's investment experience, once declared they are the property of the insured, and unlike the payments under respondent's "Flexible Fund Annuity," their amount does not depend upon the future market performance of the company's securities portfolio.

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Cases—Continued

Prudential Ins. Co. of America v. *Securities and Exchange Commission*, 326 F. 2d 383, certiorari denied, 377 U.S. 953 ..... Page 14, 30
Securities and Exchange Commission v. *C. M. Joiner Leasing Corp.*, 320 U.S. 344 ..... 19, 25, 37
Securities and Exchange Commission v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180 ..... 17, 31
Securities and Exchange Commission v. *Ralston Purina Co.*, 346 U.S. 119 ..... 16, 37
Securities and Exchange Commission v. *Variable Annuity Life Insurance Co.*, 359 U.S. 65 ..... 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22, 24, 26, 27, 28, 29, 30, 31, 32, 37.
Securities and Exchange Commission v. *W. J. Howey Co.*, 328 U.S. 293 ..... 17, 18, 31, 37

Statutes and Rules:

Securities Act of 1933, 48 Stat., as amended, 15 U.S.C. 77a, *et seq.*:
Section 2(1) (15 U.S.C. 77b(1)) 18, 21, 39
Section 3(a)(8) (15 U.S.C. 77c(a)(8)) 13, 29, 33, 39
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Section 7 (15 U.S.C. 77g) 18
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Investment Company Act of 1940, 54 Stat. 789, 15 U.S.C. 80a–1, *et seq.*:
Section 2(a)(8) (15 U.S.C. 80a–2(a)(8)) 40
Section 2(a)(17) (15 U.S.C. 80a–(2)(a)(17)) 14, 40
Section 2(a)(21) (15 U.S.C. 80a–2(a)(21)) 40
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Section 3(a)(3) (15 U.S.C. 80a–3(a)(3)) 41
Section 3(c)(3) (15 U.S.C. 80a–3(c)(3)) 9
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Section 8 (15 U.S.C. 80a–8) 2
Section 10 (15 U.S.C. 80a–10) 20
Section 13 (15 U.S.C. 80a–13) 20
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Section 18 (15 U.S.C. 80a–18) 20
Section 18(i) (15 U.S.C. 80a–18(i)) 20
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Section 27 (15 U.S.C. 80a–27) 20
Section 30(d) (15 U.S.C. 80a–30(d)) 20
McCarran-Ferguson Act, 15 U.S.C. 1011–1015 13
Neb. Rev. Stat. (1963 Cum. Supp.) § 44–310.06 3
Miscellaneous:
Bellinger, Hagmann & Martin, *The Meaning and Usage of the Word "Annuity"*, 9 Journal of the American Society of Chartered Life Underwriters 261 (1955) 24
Blakeslee, *The Regulation of Vraiable Annuities—Pt. II*, Best's Insurance News (Life ed. Nov. 1965) 22
Haussermann, *The Security in Variable Annuities*, Insurance Law Journal (June 1956) 24
Hearings on S. 3580 Before a Subcommittee of the Senate Committee on Banking and Currency, 76th Cong., 3d Sess. (1940) Part 1 19, 29
H. Rep. No. 85, 73d Cong., 1st Sess. (1933) 29
H. Rep. No. 2639, 76th Cong., 3d Sess. (1940) 19, 21
Huebner and Black, *Life Insurance* (6th ed. 1964) 24, 36
Institute of Life Insurance, *Life Insurance Fact Book* (1966) 24
Investment Trusts and Investment Companies, Report of Securities and Exchange Commission, Supplement on "Companies Sponsoring Installment Investment Plans," H. Doc. No. 482, 76th Cong. (1940) 21
Maclean, *Life Insurance* (9th ed. 1962) 24, 36
Mehr and Osler, *Modern Life Insurance* (3d ed. 1961) 24, 36
Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth, H. Rep. No. 2337, 89th Cong., 2d Sess. (1966) 22
S. Rep. No. 1775, 76th Cong., 3d Sess. (1940) 19, 21
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BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION

OPINIONS BELOW

The oral ruling and the findings and conclusions of the district court (R. I 76–77, 105–107) are unreported. The opinion of the court of appeals (R. I 109–115) is reported at 359 F. 2d 619.

JURISDICTION

The judgment of the court of appeals was entered on March 10, 1966 (R. I 116). On June 9, 1966, the Chief Justice extended the Commission's time to file a petition for a writ of certiorari to July 8, 1966, and on July 7, 1966, Mr. Justice Stewart further extended the time for petitioning to August 8, 1966. The petition was filed on the latter date and was granted on October 24, 1966 (R. I 119). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the insurance exemptions to the disclosure and regulatory provisions of the Securities Act of 1933 and the Investment Company Act of 1940 encompass a "Flexible Fund Annuity" contract under which the value of the purchaser's interest during the accumulation period and the size of the annuity available at maturity depend in significant part upon the value of a portfolio of securities managed by the respondent.

STATUTES INVOLVED

The relevant provisions of the Securities Act of 1933, 48 Stat. 74, as amended, 15 U.S.C. 77a, *et seq.*, and the Investment Company Act of 1940, 54 Stat. 789, 15 U.S.C. 80a–1, *et seq.*, are set forth in the Appendix, *infra*, pp. 39–41.

STATEMENT

1. The Securities and Exchange Commission instituted this action in the United States District Court for the District of Columbia to enjoin respondent (a) from offering and selling securities in violation of the registration requirements of Section 5 of the Securities Act of 1933 (15 U.S.C. 77e), and (b) from engaging in activities enumerated in Section 7(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–7(b)) without registering its "Flexible Fund" pursuant to Section 8 of the Act (15 U.S.C. 80a–8) (R. I 5–21). At issue is the applicability of these statutes to respondent's "Flexible Fund Annuity" program, which may be briefly described as follows:

A purchaser of a Flexible Fund contract makes fixed periodic payments to respondent, a company predominantly engaged in the life insurance business. Respondent undertakes to pool these amounts, after certain specified deductions for sales and administrative expenses,[1] with amounts received from other purchasers of such contracts in a separate account called the "Flexible Fund" or "Flexible Fund A" (PX 2, 3; R. II 3, 13).[2] The assets of the Flexible Fund are invested by respondent in securities, consisting largely of common stocks (PX 3, 8B; R. II 12, 15, 70). The portfolio is administered by respondent, and securities are bought or sold in accordance with the investment judgment of its management (PX 2, 3; R. II 8, 15). The Fund is reduced each month by a fixed charge aggregating approximately 1 percent per year[3] and by an indeterminate charge for income taxes related to the Fund (PX 2, 3; R. II 3, 13; R. I 98).

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[1] Fifty percent of the first year's payments is deducted, 9½ percent is deducted in each of the following nine years, and 5 percent in each year thereafter (PX 2, 3; R. II, 3, 13).

[2] Special enabling legislation in Nebraska, where respondent is incorporated (R. I 105), permits respondent to establish and administer such a separate account. The statute permits income and gains or losses on such an account to be credited or charged to amounts allocated to it "without regard to the other income, gains, or losses of the company." Neb. Rev. Stat. § 44–310.06 (1963 Cum. Supp.).

[3] The 1 percent charge was selected by respondent in light of its estimate that investment expenses and the cost of meeting the mortality and minimum cash value guarantees will each average approximately one-half of one percent of the asset value of the Fund (R. I 98).

The net asset value of the Fund, as computed each month, fixes the value of each purchaser's pro rata share in the assets of the Fund (PX 2, 3; R. II 3, 13).

The purchaser continues making payments until a "maturity" date selected by him when he first enters into the contract (subject to subsequent change within certain limitations) (PX 2, 3; R. II 2, 4, 18, 19). At any time during the period prior to maturity (the "pay-in" period), he has the option of surrendering his contract and receiving the accumulated value of his interest in the Fund. If he dies during this period, his beneficiary receives either the accumulated value of his interest or a refund of the total of his payments theretofore made, whichever is larger (PX 2; R. II 2, 3).

At the maturity date the contract holder ceases to participate in the Fund. He may then elect to receive the value of his interest in the Fund in cash. Alternatively, he may apply it to the purchase of an annuity under which he receives fixed monthly payments for the remainder of his life (the "pay-out" period). The size of the payments under the latter election is determined by applying an annuity table set forth in the contract (PX 2; R. II 2, 5) to the value of the contract holder's interest in the Fund on the maturity date. Since the contract holder has no interest in the Fund once the pay-out period begins, the annuity payments are fixed in amount as of the maturity date and do not fluctuate with subsequent changes in the market value of the Fund's portfolio.

In addition, the contract contains a "minimum cash value" provision under which respondent guarantees that if the accumulated value of the contract holder's interest at the time he withdraws from the Fund, whether at or before maturity, is less than a certain minimum amount, respondent will make up the difference. The guaranteed minimum is stated in terms of a percent of "net premiums," *i.e.*, the purchaser's gross payments less the stated deductions (see note 1, p. 3, *supra*), and assures a purchaser that a percentage of his "net premiums," ranging from 50 percent in the first year to 100 percent after payments for ten years have been made, will be available upon withdrawal, either to be taken in cash or to be applied to the purchase of a fixed-dollar annuity (PX 2; R. II 3).[4]

The guaranteed percentages of "net premiums" were selected on the basis of statistical studies conducted by respondent prior to offering the Flexible Fund contract. The studies demonstrated that those percentages were sufficiently low as to create no signifi-

[4] Since "net premiums" are a variable percent of total purchase payments, the guaranteed cash value may be expressed as a percent of the total payments. That guaranteed percent changes over the pay-in period as follows:

Total purchase payments	*Guarantees expressed as a percent of total purchase payments*
1 full year	25.0
2 full years	38.6
3 full years	46.2
4 full years	52.2
5 full years	57.7
10 full years	86.5
15 full years	89.3
20 full years	90.7

In later years, the guarantee approaches, but does not reach, 95 percent of total purchase payment.

cant likelihood that the guarantee would be called into play.[5]

Respondent's sales brochure, its other advertising, and the sales materials it furnishes to its representa-

[5] Respondent made elaborate studies of the history of the securities market over an 80-year period from 1880 through 1960 (PX 16A, -B, -C, -D, -E, and 17; see R. I 64–73, 101, II 111–33). One of the studies (PX 17; R. I 70–73, II 118, 130–133), covering the period 1933 through 1960 (R. I 71), applied the 9 worst annual percentage drops (occurring in periods ranging from 1 through 9 years) in stock prices to a hypothetical fund composed entirely of Moody's list of 125 industrial common stocks to determine what the cash value of such fund would have been at the end of each of the periods. From this study respondent compiled the following table (R. II 131):

Worst Drop in Averages over the Period	Cash Value at End of Period	Suggested Guarantee
	Percent of net premium	*Percent*
1 year	51.6	50
2 years	67.2	55
3 years	74.3	60
4 years	75.3	65
5 years	71.5	70
6 years	74.4	75
7 years	84.2	80
8 years	93.1	85
9 years	99.6	90
10 years	----	100

Thus, on only one hypothesis (the worst drop in common stock averages over any 6-year period) would the "Suggested Guarantee" have resulted in any liability from the operation of a purely common stock fund starting in 1933, and even that would have been a liability of only 6/10ths of 1 percent of the net amount paid in—*i.e.*, the difference between the cash value and the guarantee. It is apparent that, had the hypothetical fund contained both fixed income securities and common stocks—as is the case with the Flexible Fund—(see PX 14; R. I 93), no liability under the "Suggested Guarantee" would ever have been incurred at any time during the period covered by the study (see R. I 68–70; PX 17, R. II 121). The guaranteed minimum percentages subsequently incorporated in the Flexible Fund contract (PX 2; R. II 3) were identical to the "Suggested Guarantee" in the table above.

tives for use in soliciting the public repeatedly stress the potential for growth offered by participation in the Flexible Fund's portfolio of securities. The sales brochure (which each purchaser declares in his application that he has read) describes investment features of the Flexible Fund contract—features designed to induce prospective purchasers to enter into the contract on the expectation that it will produce results far exceeding the fixed accumulation provided by tradition annuities (PX 2, 3; R. II 8, 10–20). The Flexible Fund contract is described as providing a modernized method of capital accumulation that gives an opportunity for greater return through participation in a separate fund invested largely in common stocks, thus affording the contract holders a chance to share in the growth of the country's economy (PX 3; R. II 12).

Respondent's newspaper advertisements have proclaimed that the Flexible Fund contract offers "New Opportunity for Financial Growth!" (PX 6; R. II 26). Respondent has furnished its agents with a kit of visual aid sales materials (PX 5; R. II 21–25) for use in soliciting purchasers of the Flexible Fund contract (R. I 79). These materials are designed to substantiate the sales pitch with colorful headlines, charts and graphs. The Flexible Fund contract is represented as providing "features never before combined in a single plan" including "OPPORTUNITY FOR GROWTH" with interest and dividend earnings compounded through reinvestment and "Appreciation in values" (R. II 22). A list of the Fund's initial investments is superimposed upon a background of

symbols and trademarks of leading blue chip corporations commonly identified with investment success and capital growth, *e.g.*, GM, duPont, IBM, AT&T, ALCOA, USS, 3–M Company, TEXACO, GULF, Kodak, GE, and Dow (R. II 23).

Under the heading of "INVESTMENT MANAGEMENT" the sales brochure tells the prospective purchaser that "The Investment Committee consists of professional investment men who for years have had the responsibility for the investment of millions of dollars of the Company's assets" and that "*a Flexible Fund Annuity gives you the Benefit of full-time professional investment managment*" (PX 3; R. II 15). What this experienced investment management might accomplish for the prospect through a combination of skillful selection of investments and favorable market conditions over a period of years is illustrated by graphs and tables (PX 3, 5; R. II. 16, 24, 25). Thus a graph in the brochure shows that payments under the contract of $100 a month for 25 years between 1937 and 1961 would have appreciated from approximately $27,500 (the amount of "net premiums") to more than $180,000 if the Fund had been invested so as to grow at the rate of the Dow Jones Industrial Averages during those years (PX 3; R. II 16).

2. At the conclusion of the Commission's evidence, respondent moved to dismiss the complaint on the ground that the "Flexible Fund Annuity" was "an insurance product" and was therefore exempt from the regulatory provisions of the Securities Act of 1933 and the Investment Company Act of 1940 (R. I 103–104). The district court entered findings of fact, among which was the following (R. I 105):

> 5. Under the guaranteed minimum cash value provision in the FFA policy the defendant guarantees to the annuitant a fixed dollar equal monthly retirement income after the maturity date is reached which income cannot be outlived and the defendant thereby assumes the investment risk involved in that guarantee.

On the basis of this finding, the district court concluded that respondent had, in light of this Court's decision in *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Co.*, 359 U.S. 65, assumed a sufficient share of the investment risk to qualify the contract as an "insurance product," and it dismissed the complaint (R. I 106–107).

The court of appeals affirmed, holding that "United has assumed not only a substantial part, but by far the major part, of the investment risk over the duration of the entire policy. The obligations of United under the FFA, unlike those of the variable annuity, are stated, in large part, in terms of guaranteed dollar amounts; there is a substantial and meaningful 'floor' to the FFA policy" (R. 114–115).[6]

SUMMARY OF ARGUMENT

A. Both the Securities Act of 1933 and the Investment Company Act of 1940 exempt "insurance" from their disclosure and regulatory provisions. In *Securities and Exchange Commission* v. *Variable Life Insurance Co.* (*"VALIC"*), 359 U.S. 65, this Court held that a variable annuity contract that guaranteed the purchaser no fixed dollar payments but only payments

[6] The court thus did not reach the Commission's contention that the Fund itself constituted an investment company under the Investment Company Act of 1940. See *infra*, p. 14, n. 8.

based upon his pro rata share of the fluctuating value of a portfolio of securities was a "security" rather than an insurance contract and therefore not within the foregoing insurance exemptions. Although the contract involved in the present case differs in some respects from that involved in *VALIC*, its essential nature is the same: in both situations the customer is being sold, and is knowingly buying, a participation in a pool of equity securities, which he anticipates will increase in value. Thus, the need for investor protection here is just as great as in *VALIC*, and respondent's Flexible Fund contract is similarly subject to the registration and regulatory provisions of the federal securities laws.

B. The Securities Act of 1933 requires full disclosure of the information necessary to enable the purchaser of a security intelligently to appraise the risks involved when he is asked to invest his funds in an enterprise managed by others. The Investment Company Act of 1940 provides additional protections when the investment takes the form of a participation in a managed fund or pool of securities. Respondent's Flexible Fund operates in much the same way, and performs the same functions, as a typical mutual fund selling shares under a periodic accumulation plan. Indeed, respondent's sales literature represents the Fund as a vehicle for investing in the stock market. Construing the insurance exemptions in the light of the purpose they were intended to serve, the kind of interests Congress intended to regulate, and the need for the protections the securities acts were intended to provide, the Flexible Fund contract is not an insurance contract.

The need of the purchasers of Flexible Fund contracts for the protections of the securities laws is demonstrated by the substantial extent to which they forego security in return for the opportunity to participate in the anticipated profits of the Fund's securities dealings. Although respondent's contracts provide certain guaranteed minimum repayments, these guarantees are "substantially less" than the premiums paid, particularly in the early years (R. I 96). Moreover, the Flexible Fund participant, unlike the holder of the usual deferred annuity, has no assured yield on his savings. These characteristics, which enable the Flexible Fund to invest heavily in equity securities rather than the fixed obligations normally held by insurance companies, distinguish the Flexible Fund arrangement from the conventional annuity and demonstrate the inapplicability of the statutory insurance exemptions.

C. The rationale of the insurance exemptions, which Mr. Justice Brennan discussed at length in his concurring opinion in *VALIC* and which led him to conclude that the variable annuity there involved was not insurance, are equally applicable to respondent's Flexible Fund contract and require the same conclusion as to it. As he there pointed out, a conventional annuity is essentially a fixed-dollar obligation, and the holder of such an annuity is adequately protected by traditional State regulation of insurance companies, which is designed to insure that the company remains solvent and able to meet such fixed obligations as they accrue. The interest of a participant in the Flexible Fund or the VALIC variable annuity, on the other hand, fluctuates with the value of a fund of se-

curities, and is therefore not the type of interest that traditional State regulation is designed to protect. Conversely, it is the kind of interest that the federal securities acts were intended to protect.

D. Neither the availability of a fixed annuity at maturity nor respondent's minimum guarantee converts the Flexible Fund contract into a contract of insurance.

Each Flexible Fund participant, upon withdrawing from the Fund at maturity, may take his share of the portfolio in cash or apply it toward the purchase of a standard annuity. The latter annuity—which admittedly is exempt from regulation as an "annuity contract" under the Securities Act of 1933—is distinct from and in no way changes the nature of the interest that respondent sells in the Flexible Fund. It is only the latter interest that the Commission seeks to regulate, and the combination of that interest with a conventional annuity neither converts it into insurance nor obviates the need for federal protection for its purchasers.

Respondent, by guaranteeing that, upon withdrawal from the Fund, a contract holder will receive at least a stated percentage of his aggregate purchase payments undoubtedly assumes some risk. But such risk does not make the Fund contracts insurance. For, as respondent's own studies demonstrate, the degree of risk is minimal, and it is highly unlikely that respondent will ever have to make good on its guarantee. Moreover, notwithstanding the guarantee, if respondent's investments turn out to be unprofitable, the participants stand to lose an appreciable portion of

their "net premiums" as well as the yield their savings might have earned under customary annuity policies. Finally—and most important—the critical question is not whether respondent has assumed a substantial risk, but whether contracts under which the public purchases interests whose value significantly depends upon the investment experience of a portfolio of securities managed by respondent are within the congressional understanding of the term "insurance." We submit that they are not.

ARGUMENT

THE INSURANCE EXEMPTIONS OF THE SECURITIES ACT OF 1933 AND THE INVESTMENT COMPANY ACT OF 1940 DO NOT COVER RESPONDENT'S "FLEXIBLE FUND"

A. INTRODUCTION

The Securities Act of 1933 and the Investment Company Act of 1940 both contain exemptions relating to insurance.[7] Section 3(a)(8) of the Securities Act, 15 U.S.C. 77c(a)(8), exempts from registration "[a]ny insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner * * * of any State * * *". Similarly,

[7] Respondent also claims exemption by reason of the McCarran-Ferguson Act, 15 U.S.C. 1011–1015. The issue involved in the present case is, however, the same under all three acts. As this Court stated in *Securities and Exchange Commission* v. *Variable Annuity Life Ins. Co.*, 359 U.S. 65, 68; "The question common to the exemption provisions of the Securities Act and the Investment Company Act and to § 2(b) of the McCarran-Ferguson Act is whether respondents are issuing contracts of insurance." Accordingly we advance no separate argument as to the McCarran-Ferguson Act.

Section 3(c)(3) of the Investment Company Act, 15 U.S.C. 80a–3(c)(3), excepts from the definition of investment company "any * * * insurance company." An insurance company is defined in Section 2(a)(17) of that Act, 15 U.S.C. 80a–2(a)(17), as "a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner * * * of a State * * *."[8] Of course, "the meaning of 'insurance' or 'annuity' under these Federal Acts is a federal question" (*Securities and Exchange Commission* v. *Variable Annuity Life Insurance Co.* (*"VALIC"*), 359 U.S. 65, 69).

In *VALIC, supra,* this Court held that a variable annuity contract that guaranteed the purchaser no fixed dollar payments but only payments based upon his pro rata share of the fluctuating value of a port-

[8] Respondent itself is clearly an exempt insurance company within this definition since its primary and predominant business is the writing of customary forms of insurance. We urged below, however, that that exemption does not carry over to the separate Flexible Fund which is entirely devoted to a species of variable annuity. See *Prudential Insurance Co. of America* v. *Securities and Exchange Commission*, 326 F. 2d 383 (C.A. 3), certiorari denied, 377 U.S. 953. The courts below did not decide the issue. Since they found that the Flexible Fund contract is an exempt contract of insurance, they did not reach the question of whether the Flexible Fund, as distinguished from respondent, is an investment company within the meaning of the Investment Company Act. If the Court agrees with us that respondent's contracts are not within the insurance exemptions, it should remand the case for the lower courts to decide whether the Flexible Fund itself is an investment company.

folio of securities was a "security" rather than a "contract of insurance" and therefore not within the foregoing "insurance" exemptions. The Court reasoned that since "the concept of 'insurance' involves some investment risk-taking on the part of the company" (359 U.S. at 71), the variable annuity there involved—which "places all the investment risks on the annuitant, none on the company" (*ibid.*)—was not insurance as that term is used in the federal securities laws, even though "[i]n some respects the variable annuity has the characteristics of the fixed and conventional annuity" (359 U.S. at 70).

Respondent's Flexible Fund contract concededly differs from the variable annuity involved in *VALIC* in that it does guarantee to the purchaser a certain fixed amount.[10] The court of appeals reasoned that this guarantee both distinguishes this case from *VALIC,* and makes the insurance exemptions applicable to the Flexible Fund. But the critical inquiry in determining whether respondent's contracts

[10] A further distinction is that although in *VALIC* the amount of the annuity payments continued to fluctuate during the entire pay-out period as the value of the portfolio changed, under respondent's plan the amount of the payments is fixed by the value of the portfolio at the beginning of the pay-out period, and thereafter does not change with changes in the value of the portfolio. As we show below (pp. 32–34), this factor similarly does not convert respondent's Flexible Fund contracts into insurance.

[11] The Commission is seeking to apply the federal securities laws only with respect to the Flexible Fund itself and to the participations that respondent sells in the Fund; we claim no authority with respect to the fixed-dollar annuity that is available to the Fund participant following the maturiy of his contract and his withdrawal from the Fund. Our claim here is thus more limited than our claim in *VALIC*, since there the

are contracts of insurance within the meaning of the exemption provisions [11] is not whether respondent has assumed some risk, as the court of appeals believed, but whether, because purchasers of those contracts directly participate in the investment experience of a pool of securities, they require the same investor protections that were afforded the purchasers of the variable annuities involved in *VALIC*. As this Court explained in *Securities and Exchange Commission* v. *Ralston Purina Co.*, 346 U.S. 119, 127, the "focus of inquiry should be on the need of the offerees for the protections afforded by registration." This, in turn, requires a consideration of the various protections that these statutes provide for investors; and an analysis of precisely what respondent is selling, and what its customers are buying, in the Fexible Fund contract. As we develop below, the need for investor protection here is no less than it was in *VALIC*, and for the same reason: in both situations the customer is being sold, and is knowingly buying, a participation in a pool of equity securities, which he anticipates will increase in value.

The court of appeals' conslusion is subject to two other infirmities. First, as we show below (pp. 23–25, 34–35), the guarantee does not place any significant risk on the company or indeed any *"investment* risk" at all as that term is used in the insurance con-

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entire annuity plan—during both pay-in and pay-out periods—was held subject to the Acts. The Commission's jurisdiction over the pay-out phase of the plan there rested upon the fact that during that period the value of the purchaser's interest continued to fluctuate with the market value of the company's portfolio.

text. Second, the fact that a variable annuity in which the company assumes no risk is not an insurance contract does not prove the converse, namely, that a variable annuity in which the company assumes some risk automatically is an insurance contract. Thus, even assuming the validity of the ground upon which the court of appeals distinguished *VALIC*, it would not follow that because respondent assumed some risk, its Flexible Fund contracts are "contracts of insurance" and thus immune from regulation.

Moreover, the court of appeals' decision is at odds with the settled rule that the federal securities laws are to be construed "not technically and restrictively, but flexibly to effectuate [their] remedial purposes" (*Securities and Exchange Commission* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195). Whether contracts like respondent's are covered by those laws depends upon "economic reality"; "the statutory policy of affording broad protection to investors" must not be "thwarted by unrealistic and irrelevant formulae" (*Securities and Exchange Commission* v. *W. J. Howey Co.*, 328 U.S. 293, 298, 301). Consistent with this approach, it has been held that the exemptions to the securities laws are to be strictly construed. *Capital Funds, Inc.* v. *Securities and Exchange Commission*, 348 F. 2d 582, 586 (C.A. 8).

B. RESPONDENT'S FLEXIBLE FUND CONTRACTS ARE THE KIND OF INTEREST TO WHICH CONGRESS INTENDED THE SECURITIES ACT OF 1933 AND THE INVESTMENT COMPANY ACT OF 1940 TO APPLY

1. Both the Securities Act of 1933 and the Investment Company Act of 1940 were designed to provide important protections to persons who invest their

capital in enterprises managed by others. The Securities Act of 1933 requires full disclosure of the information necessary to enable the purchaser of a security intelligently to appraise the risks involved when he makes an investment decision. The Act provides that when securities are offered for public sale a registration statement must be filed with the Commission and a prospectus must be given to each purchaser. The registration statement and prospectus must contain complete financial statements certified by an independent accountant and detailed information as to the type of venture, the capitalization, the use of the proceeds from the offering, the underwriting expenses, the interests of management and promoters in certain financial transactions and numerous additional matters (Sections 4, 5, 7, 10, and Schedule A, 15 U.S.C. 77d, 77e, 77g, 77j, 77aa).

In order to insure that these protections were widely available wherever needed Congress broadly defined the term "security" in Section 2(1) of the Securities Act, 15 U.S.C. 77b(1), to encompass not only the more commonly recognized vehicles of investment, such as stocks and bonds, but also such types as a "certificate of interest or participation in any profit-sharing agreement," an "investment contract," any interest or instrument commonly known as 'security' " and "any certificate of interest or participation in * * * any of the foregoing." In *Securities and Exchange Commission* v. *W. J. Howey Co.*, 328 U.S. 293, this Court, in a passage which it quoted in *VALIC* (359 U.S. at 72 n. 13), stressed the broad reach of this protective statute. It stated that "an investment contract for purposes of the Securities Act means a

contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise." Such a definition, the Court there noted, "permits the fulfillment of the statutory purpose of compelling full and fair disclosure" and "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." 328 U.S. at 298–299. See, also, *Securities and Exchange Commission* v. *C. M. Joiner Leasing Corp.*, 320 U.S. 344, 351.

The Investment Company Act of 1940 provides additional investor protections, beyond the full disclosure requirements of the Securities Act, when the investor's interest takes the form of a participation in a fund or pool of securities.[12] The 1940 Act seeks, *inter alia,* to foster integrity in the management of investment companies, to permit greater participation by shareholders in the affairs of their companies, to provide shareholders with information concerning

[12] Investment companies have been described as essentially "large liquid pools of the public's savings entrusted to managements to be invested." *Hearings on S. 3580 Before a Subcommittee of the Senate Committee on Banking and Currency*, 76th Cong., 3d Sess. (1940), Part 1, p. 33, quoted in H. Rep. No. 2639, 76th Cong., 3d Sess. (1940), p. 6. They "provide a medium for public investment in common stocks and other securities." S. Rep. No. 1775, 76th Cong., 3d Sess. (1940), p. 2.

their companies, to secure adequate and feasible capital structures and to regulate certain practices involved in the sale of investment company shares. For example, the Act imposes various restrictions on the affiliations of investment company directors;[13] contains prohibitions against self-dealing by management;[14] requires that directors be elected by the shareholders[15] and that the investment advisory contract be approved by the shareholders and be subject to termination by them on sixty-days notice;[16] prohibits investment companies from changing their investment policies without shareholder approval;[17] regulates proxy solicitations;[18] requires that investment companies send financial reports to their shareholders at least semiannually;[19] restricts the issuance of senior securities;[20] and regulates the sales charge which may be made on investment company securities sold under periodic payment plans.[21]

2. Respondent's Flexible Fund is designed, offered to the public and operated as a method for the investment of savings in a common enterprise in the expectation of profits through favorable market performance and respondent's investment skill. As the court of appeals recognized (R. I 110), "[u]nlike a conventional annuity * * * United promises that the

[13] Section 10, 15 U.S.C. 80a–10.
[14] Section 17, 15 U.S.C. 80a–17.
[15] Sections 16, 18(i), 15 U.S.C. 80a–16, 18(i).
[16] Section 15(a), 15 U.S.C. 80a–15(a).
[17] Section 13, 15 U.S.C. 80a–13.
[18] Section 20(a), 15 U.S.C. 80a–20(a).
[19] Section 30(d), 15 U.S.C. 80a–29(d).
[20] Section 18, 15 U.S.C. 80a–18.
[21] Section 27, 15 U.S.C. 80a–27.

annuitant will be credited with a proportionate share of the profits which have resulted from the investment and reinvestment of the money in the Flexible Fund." As noted above (*supra,* pp. 7–8), respondent promotes the Fund as an "opportunity to share in the growth of our economy" with the "benefit of full-time professional investment management" (R. II 15). The Flexible Fund contract is an "investment contract" and a "certificate of interest or participation in any profit-sharing agreement" within the meaning of Section 2(1) of the 1933 Act (15 U.S.C. 77b(1)).

Moreover, in significant respects, the Fund is substantially identical to the open-end management companies, commonly called mutual funds, which comprise by far the largest segment of the investment company industry.[22] Mutual funds commonly sell a substantial portion of their shares under periodic accumulation arrangements whose terms are essentially the same as those on which participations in respondent's Flexible Fund are sold. These periodic accumulation plans were of particular concern to both Congress and the Commission at the time of the passage of the Investment Company Act and were discussed in detail in the House and Senate Committee Reports and in the report by the Commission on its study and investigation of investment companies.[23]

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[22] See Securities and Exchange Commission 31st Annual Report—1965, p. 109.

[23] See H. Rep. No. 2639, 76th Cong., 3d Sess. (1940), p. 8; S. Rep. No. 1775, 76th Cong., 3d Sess. (1940), pp. 8–10; *Investment Trusts and Investment Companies, Report of the Securities and Exchange Commission*, Supplement on "Companies Sponsoring Installment Investment Plans," H. Doc. No. 482, 76th Cong. (1940).

Mutual fund shares, like the participations acquired by investors in respondent's Flexible Fund, represent a proportional share of a portfolio of securities, usually common stocks. As with the plan involved here, mutual fund periodic accumulation plans provide for the payment by investors of specified sums of money at given intervals, and this money, after deduction for sales expenses, is pooled and invested in a portfolio of securities. The mutual fund shareholder, like the Flexible Fund participant, may redeem his interest at any time and receive in cash the value of his proportionate share of the underlying portfolio. The principal aim of the mutual fund shareholder, like that of the Flexible Fund participant, is to invest in the securities markets by entrusting his capital to the company's management with the expectation that its efforts and favorable market trends will result in a profit to him. Indeed, it is well recognized that the variable annuity, of which respondent's Fund is a variant,[24] represents an effort by the insurance industry to compete effectively with mutual funds in a period marked by continuous inflation, rising common stock prices and the extremely rapid growth of mutual funds.[25] The purchaser of a variable annuity should

[24] In *VALIC* the Court identified the two distinguishing features of the variable annuity as follows (359 U.S. at 69): "First, premiums collected are invested to a greater degree in common stocks and other equities. Second, benefit payments vary with the success of the investment policy." Both of those characteristics are features of the Flexible Fund.

[25] See *Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth*, H. Rep. No. 2337, 89th Cong., 2d Sess. (1966), p. 2; Blakeslee, *The Regulation of Variable Annuities—Pt. II*, Best's Insurance News (Life ed. Nov. 1965) 52, 56.

therefore receive the same protections as the purchaser of shares in a mutual fund.

3. The need for these protections is dramatically shown by an analysis of what purchasers of Flexible Fund contracts give up in the way of guaranteed return in exchange for their opportunity to participate in what respondent describes in its sales brochure as "a chance to share in the growth of the country's economy" (PX 3; R. II 12). Like all other investors in equity securities, purchasers of Flexible Fund contracts give up a substantial measure of security for their investment in the hope of obtaining substantial, although more speculative, profits flowing from the success of the Fund's investments—principally common stocks.

In the first place, the minimum guarantee is substantially less than the amount the purchaser pays under the contract—particularly so in the earlier years—and at the outset the purchaser assumes the complete risk for 75 percent of his payments (see *supra*, p. 5, N.Y.).[25a] Although that percentage gradually declines, it does so only as the absolute dollar amount increases. More important, the Fund participants forego any promise of interest on their savings. Of course, the very nature of the Fund—a pool of equity securities—precludes respondent from promising any rate of return on the amounts in-

[25a] Respondent advised the West Virginia Insurance Department (R. I. 96): "Illinois has currently withheld approval because of their impression that holders of such policies participate in gains but not in losses. This is not the situation under our policy, the minimum guaranteed values being substantially less than the sum of the premiums particularly in the early years."

vested; or, to put it the other way, respondent's freedom to invest the Fund largely in equities is directly dependent on its avoidance of any obligation to produce a fixed yield. In contrast, the guaranteed yield, and the fixed-return investment required to meet that guarantee, have been the traditional hallmarks of insurance.[26] As the articles cited by the Court in *VALIC* (359 U.S. at 71 n. 12) make clear, the "fixed return" that the Court found to be fundamental to the assumption of "investment risk" in the "insurance" sense embraces not simply a refund of part or even all of the amounts deposited but an undertaking to pay a guaranteed yield on those amounts.[27] That element is wholly lacking in the Flexible Fund, and inevitably so.

The extent to which Fund participants forego a risk-free return on their savings can be readily seen from a comparison of the Fund's "guaranteed minimum" with the cash surrender value of respondent's ordinary deferred annuity (see PX 7, R. II 27–34). An annuitant who pays $100 per month for 30 years under respondent's ordinary deferred annuity contract

[26] See Mehr and Osler, *Modern Life Insurance*, 570–571 (3d ed. 1961); Huebner and Black, *Life Insurance*, 297–300, 313–322, 390 (6th ed. 1964); Maclean, *Life Insurance*, 61, 91 (9th ed. 1962). United States life insurance companies held assets at the end of 1965 of an aggregate value of $158.88 billion of which $6.26 billion or only 3.9% were in common stocks. See Institute of Life Insurance, *Life Insurance Fact Book* (1966), pp. 67,81.

[27] See Bellinger, Hagmann and Martin, *The Meaning and Usage of the Word "Annuity,"* 9 Journal of the American Society of Chartered Life Underwriters 261, 268 (1955); Haussermann, *The Security in Variable Annuities*, Insurance Law Journal, June 1956, pp. 382, 387.

is guaranteed $54,828 at its maturity; the guaranteed value after a like number of payments under the Flexible Fund contract is only $33,174, or $21,654 less. Indeed, as the table set forth in the footnote shows,[28] after thirty years the Flexible Fund participant's guarantee is $36,297 less than the amount he would receive by making like payments to a savings and loan association (at 4 percent compounded quarterly) and $2,826 less than he would have from putting the same amount monthly in a safe. It is unreasonable to suppose that respondent's customers would thus forego $20,000 or $30,000 in savings except in the belief that they might thereby gain appreciably through participation in the stock market under respondent's management.

That the Flexible Fund contract is offered as a medium for investment in the stock market, subjecting the purchaser to its attendant risks, is strikingly demonstrated by respondent's own sales literature. The courts below gave no weight whatever—indeed, they apparently did not even consider—these sales materials, notwithstanding the admonition by this Court in *Securities and Exchange Commission* v. *C. M. Joiner Leasing Corp.*, 320 U.S. 344, 352–353, that in determining whether a particular document

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Years	Paid in	Flexible fund guarantee	Respondent's standard deferred annuity (R. II 27)	Savings and loan association 4 percent compounded quarterly
1	1,200	300	624	1,226
5	6,000	3,461	5,460	6,650
10	12,000	10,374	12,504	14,764
20	24,000	21,774	30,792	36,745
30	36,000	33,174	54,828	69,471
40	48,000	44,574	87,156	118,197

or offering is within the scope of the Securities Act, "the test * * * is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect," because "[i]n the enforcement of an act such as this it is not inappropriate that *promoters' offerings be judged as being what they were represented to be*" (emphasis added). This test, applied to respondent's sales literature, leaves no doubt that the Flexible Fund contract is offered to the public upon respondent's representation that it is a vehicle for investing in the stock market.

As noted, the contract is described as providing "a chance to share in the growth of the country's economy" (PX 3; R. II 12). There is a graph depicting the rising trend of the Dow-Jones Industrial Averages (PX 3; R. II 16), and there are tables which show, for example, a 30-year accumulation totalling more than eight times the amount of the purchaser's payments into the Fund (PX 5; R. II 25). In sum, respondent's sales pitch confirms what reason and common sense suggest: the inducement to purchase the Flexible Fund contract is the prospect of speculative gain—and not the certainties of insurance.

C. CONGRESS DID NOT INTEND THE INSURANCE EXEMPTIONS TO COVER THE KIND OF INTEREST ACQUIRED BY FLEXIBLE FUND PURCHASERS WHO REQUIRE THE SAME PROTECTIONS AS THE PURCHASERS OF THE VARIABLE ANNUITIES INVOLVED IN *VALIC*

1. Although the majority opinion in *VALIC* found it unnecessary to decide anything more than that an "annuity" contract which "places all the investment risks on the annuitant, none on the company" (359

U.S. at 71), is not insurance, Mr. Justice Brennan in his concurring opinion (in which Mr. Justice Stewart joined) set forth in considerable detail the reasons why a variable annuity is not "the sort of investment form that Congress was * * * willing to leave exclusively to the State Insurance Commissioners" when it enacted the securities laws (359 U.S. at 76). Those reasons are equally applicable to respondent's Flexible Fund. "[I]n the case of a traditional life insurance or annuity policy," he noted, "the obligations of the company were measured in fixed-dollar terms" and "the investor could not be said, in any meaningful sense, to be a sharer in the investment experience of the company" (*id.* at 77–78); traditional insurance companies "were not investing heavily in equity securities and holding out the possibilities of capital gains through fund management * * *" (*id.* at 79–80). Under these circumstances, he concluded, traditional state insurance regulation of reserves and solvency—a form of regulation designed to make certain that fixed obligations will be met as they accrue—provided meaningful protection for the policyholder and presumably was regarded by Congress as obviating the need for the type of protections afforded by the securities laws.

But when the investor has an interest that fluctuates with the value of a fund of securities, the protections of the federal securities laws are vital, and those afforded by the customary State regulation are relatively meaningless. As Mr. Justice Brennan pointed out (359 U.S. at 78), "the historic functions of state

insurance regulation", to which Congress deferred, are "perfectly circular to the extent that there is no obligation to pay except in terms measured by one's portfolio," since such State regulation is designed to assure the insurer's capacity to meet fixed claims by controlling the adequacy of reserves and the safety of investments thereby, in effect, assuring that "the investor in an annuity or life insurance company *not* become a direct sharer in the company's investment experience." Where, by design, the investor is a participant in the company's investment experience and "the coin of the company's obligation is not money but is rather the present condition of its investment portfolio * * * the federally protected interests in disclosure to the investor of the nature of the corporation to whom he is asked to entrust his money and the purposes for which it is to be used become obvious and real" (*ibid.*). Noting that the variable annuity was unknown when Congress created the insurance exemptions, Mr. Justice Brennan concluded that "even though these contracts contain, for what they are worth, features of traditional annuity contracts,[29] administering them also involves a very substantial and in fact predominant element of the business of an investment company, and that in a way totally foreign to the business of a traditional life insurance and annuity company, as traditionally regulated by state

[29] Mr. Justice Brennan noted that variable annuities "[o]bviously * * * have elements of conventional insurance, even apart from the fixed-dollar term life insurance and the disability waiver of premium insurance sold with some of these contracts (both of which are quite incidental to the main understaking). They patently contain a significant annuity feature * * *" (*id.* at 80).

law. That is what leads to the conclusion that it is not within the intent of the 1933 and 1940 statutes to exempt them" (*id.* at 81).

The legislative history of the securities laws confirms the soundness of this analysis. The House Report on the Securities Act points out that the exempted securities and transactions are those as to which "there is no practical need for * * * [the bill's] application or where the public benefits are too remote." H. Rep. No. 85, 73d Cong., 1st Sess. (1933), p. 5. Referring specifically to the exemption in Section 3(a)(8), the Report states (*id.* at p. 15):

> Paragraph (8) makes clear what is already implied in the act, namely, that insurance policies are not to be regarded as securities subject to the provisions of the act. The insurance policy and like contracts are not regarded in the commercial world as securities offered to the public for investment purposes. The entire tenor of the act would lead, even without this specific exemption, to the exclusion of insurance policies from the provisions of the act, but the specific exemption is included to make misinterpretation impossible.

With respect to the Investment Company Act, the testimony at the Senate hearings on that Act indicates that the exemption for insurance companies was included only because such companies would otherwise fall within the Act by reason of the investment activities which are a necessary part of their ordinary insurance business. See *Hearings on S. 3580 Before a Subcommittee of the Senate Committee on Banking and Currency,* 76th Cong., 3d Sess. (1940), Part 1,

p. 181; *Prudential Insurance Co. of America* v. *Securities and Exchange Commission,* 326 F. 2d 383, 386 n. 3 (C.A. 3), certiorari denied, 377 U.S. 953.

The legislative history is thus persuasive that the purpose intended to be served by the insurance exemptions is a quite limited one. It shows that those exemptions were intended to make certain that an industry which did not present the problems that the acts were designed to ameliorate would not be subject to regulation on purely technical grounds. Since, as we have shown in Point B, *supra,* the Flexible Fund involves precisely the factors that the acts were designed to regulate and, but for the exemptions, would unquestionably be covered, it follows that the Fund is not within the category of interests that Congress intended to define by the term "insurance."

2. Respondent's Flexible Fund involves substantially the same kind of investment as the variable annuity considered in *VALIC* and the purchasers of its contracts require the same protections as the purchasers of the *VALIC* contracts.[30] The Flexible Fund investor, like the investor in *VALIC* or the mutual fund shareholder, acquires an interest or participation in a portfolio of securities in the expectation of profiting from the growth of that portfolio through the investment management and skill of others. Invited to share in the financial experience of a pool of securities, the Flexible Fund participant, like the *VALIC*

[30] Respondent has assured the Colorado Commissioner of Insurance that "we have found rather general acceptance of the word 'Flexible' as having exactly the same connotation as the word 'variable'" (R. I 86).

investor, stands in need of the information and other protections that he can be assured only by application of the disclosure and other requirements of the federal securities law.

The scope of the insurance exemptions is to be rationally construed "in terms of the purposes of the Federal Acts" (*VALIC*, 359 U.S. at 80 (concurring opinion)) and not in a purely nominalistic fashion. Cf. *Securities and Exchange Commission* v. *W. J. Howey Co.*, 328 U.S. 293, 298, 299, 301; *Securities and Exchange Commission* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195. We submit that the insurance exemptions were never intended to exempt a contract which is offered to the public as a medium for investment in the stock market; which provides the purchaser with an interest that fluctuates in accordance with the value of a portfolio of securities; and which operates in the same way, performs the same economic function and presents the same need for the protections of the securities laws as the variable annuity involved in *VALIC*—or, indeed, as a mutual fund.

D. NEITHER THE OPTION TO RECEIVE A FIXED ANNUITY AT MATURITY NOR THE MINIMUM GUARANTEE CONVERTS THE FLEXIBLE FUND CONTRACT INTO A CONTRACT OF INSURANCE

There remain to consider only the two grounds upon which the court of appeals concluded that respondent's contract, unlike the variable annuity involved in *VALIC*, is a contract of insurance. (1) If the investor in *VALIC* elected to receive an annuity at maturity instead of cashing in his interest, he continued to share in the investment experience of the

VALIC portfolio during the payout period, *i.e.*, his monthly income payments varied with the value of the portfolio. The Flexible Fund investor, on the other hand, retains his participation in the Fund only during the pay-in period; the annuity which he may elect to receive at maturity is a conventional fixed-dollar annuity that is payable by the insurance company as such and not out of the Flexible Fund. (2) The *VALIC* contract contained no minimum guarantee.[31]

Neither of these features justifies treating respondent's Flexible Fund as involving an insurance contract.

1. *The option to receive a fixed annuity at maturity*

The option that is available to the Flexible Fund investor to purchase a fixed annuity at the maturity of his contract provides no basis for treating his contract as insurance. Respondent has simply

[31] The provision in the Flexible Fund contract for a refund of all purchase payments in the event of the purchaser's death during the pay-in period affords no basis for distinguishing the present contract from the one in *VALIC*. The contract in *VALIC* included term life insurance coverage for purchasers who were insurable—a feature which this Court referred to as a "true insurance feature" (359 U.S. at 73 n. 15). In contrast, the promise in the Flexible Fund contract to refund all premiums paid in the event of death during the pay-in period is not in the nature of an insurance promise such as a promise to pay the face amount stated in a life insurance policy. It is more like the return of consideration given for a promise which has become impossible to perform—a lifetime annuity obviously can not be paid to a person who dies before reaching retirement age. It should also be noted that the *VALIC* contract contained another conventional insurance feature that is not found in the Flexible Fund contract, namely, a waiver of premiums in the event of the purchaser's disability. See 359 U.S. at 80 (concurring opinion).

attached a standard annuity to its open-end investment plan and given investors the option of purchasing that annuity with the fruits of the investment program. The fixed annuity that is available at maturity is clearly an "annuity contract" within the meaning of Section 3(a)(8) of the Securities Act, and the Commission has never contended otherwise.[32] But that does not mean that the participations which respondent sells in the Flexible Fund—interests which in every way other than the minimum guarantee are virtually the same as mutual fund shares and which terminate at maturity—can be converted into exempt insurance contracts by tacking onto them an optional annuity available at maturity.

In combining a standard annuity with a participation in the Flexible Fund, respondent has done essentially what the Advisers Fund, Inc., a mutual fund registered with the Commission has been doing for years in conjunction with an affiliated insurance company subject to state regulation. The mutual fund's shares are sold on an installment payment plan, coupled with the promise of the insurance company that upon redemption of the shares it will accept the proceeds as payment for an immediate annuity with monthly payments based upon the annuity tables which were in effect during the pay-in period.[33] In short, what a Flexible Fund participant does with his money after he withdraws from participation at the maturity date of his contract and whether or not he elects to buy an ordinary annuity have no bearing

[32] See note 11, *supra*, p. 15.

[33] See the public official files of the Commission, File Nos. 2–10669 and 811–589.

on whether respondent is selling a security rather than insurance in offering the Flexible Fund contract as providing "New Opportunity for Financial Growth!" (PX 6; R. II 26). The suggestion of the court of appeals (R. I 114) that the Commission's analysis improperly fragments respondent's contract ignores the realities of what respondent offers. Since every Flexible Fund participant remains entirely free to take his share of the proceeds of the Fund in cash, the option to apply those proceeds to the purchase of an annuity is hardly part of a unitary, inseverable whole.

2. *The minimum guarantee*

The Flexible Fund contract provides that, upon withdrawal from participation in the Fund the holder shall receive not less than a stated percentage of his aggregate purchase payments. This minimum guarantee undeniably involves the assumption of some risk by respondent.[33a] But we submit that the court of appeals erred in concluding that such risk was substantial, or that it operated to turn the Flexible Fund contracts into insurance.

To the extent that the court's appraisal of the substantiality of respondent's risk was based upon respondent's obligations under the pay-out annuity (R. I 114), it was mistaken for the reasons previously given (*supra*, pp. 32–34). As to the pay-in period, which is the only period in which purchasers participate in the Flexible Fund, respondent, following elab-

[33a] That risk, however, is not "investment risk" in the insurance sense. See, *supra*, p. 24.

orate studies (see *supra,* p. 6, n. 5), has prudently set its guarantee at a level sufficiently low as to make it extremely unlikely that the Fund's investment experience will be so disastrous as to call the guarantee into effect.[34] Respondent has also determined that an annual charge of one-half of one percent of the asset value of the Fund will suffice to meet the unlikely eventuality of liability on the guarantee, in addition to satisfying all death claims prior to maturity.

Moreover, although the level of respondent's guarantee varies very considerably over the life of the contract, the court below did not indicate to which year between issuance and maturity it looked in appraising the substantiality of the risk. In terms of the total payments made by the purchaser, respondent's minimum guarantee is 25 percent after the first year, 57.7 percent after the fifth year and 86.5 percent after the tenth year (see *supra,* p. 5, n. 4). In comparison with what an investor could have obtained by putting his money in a bank or by buying one of respondent's deferred annuities, the percentages guaranteed are even smaller (see *supra,* p. 25, n. 28).[35]

---

[34] Indeed, unless it were extremely unlikely that the guarantee would ever become operative to any substantial extent, state insurance authorities presumably would not permit the Flexible Fund contract to be written. For if respondent were to incur significant liabilities under its guarantee, respondent in satisfying them would have to invade the resources contributed by respondent's regular life insurance and annuity policy holders, since the net payments of Flexible Fund investors go into the Flexible Fund separate account.

[35] The suggestion of the court of appeals that the Flexible Fund may be analogized to a participating annuity (R. I 114–115, n. 11), which is concededly an insurance contract under

Clearly there are an infinite number of possible variations in the allocation of risk between the issuer and the purchaser of a security (or an annuity). A mutual fund that promised to redeem its shares at not less than some small percent of their initial purchase price obviously would not thereby bring itself within the insurance exemptions to the federal securities acts. While we believe that the degree in which respondent has relieved its customers of risk is, by any rational test, too insubstantial to warrant exemption under the acts, we also believe that allocation of

---

the federal securities laws, is unsound. In a participating annuity, a portion of the annual premium may be returned to the purchaser as a "dividend." To be sure, the amount of such "dividend" may depend upon the success of the company's business during the preceding year. But such success primarily relates to the company's insurance operations—its mortality experience, operating expenses, etc.—and not, as in the present case, to increases in the value of a securities potrfolio. Since the bulk of an insurance company's assets traditionally are invested in debt securities, the amount of the participating "dividends" reflects the success of the company's investment program largely in the sense that such "dividends" will be higher if the interest rate on such debt securities is higher than anticipated—and such higher interest rates may well result not from the success of the company's investment program but from a change in interest rates generally. Moreover, to whatever extent the dividends may reflect the company's investment experience, once declared they are the property of the insured, and unlike the payments under respondent's "Flexible Fund Annuity," their amount does not depend upon the future market performance of the company's securities portfolio. See Mehr and Osler, *Modern Life Insurance* (3d ed. 1961), pp. 570–571; Huebner and Black, *Life Insurance* (6th ed. 1964), pp. 294–300, 313–322, 387–390, 392; Maclean, *Life Insurance* (9th ed. 1962), pp. 61, 91–92, 142, 144–145, 154, 169–170, 350–351. See note 26, *supra*, p. 24.

the risk is not a helpful mode of analyzing the problem. Among other considerations, we note that even if this Court agrees with us that here the respondent has not assumed sufficient risk to qualify its Flexible Fund as insurance, further and probably protracted litigation would be required before the extent of the insurance exemption—if any—for variable annuities could be definitively settled. In all events, we submit that the critical question is not the substantiality of the risk, if any, assumed by respondent, but rather whether contracts under which the public participates in the investment experience of a portfolio of securities managed by respondent are within the congressional understanding of the term "insurance."

To sum up: The decision below denies to Flexible Fund participants the significant protections afforded investors under the federal securities acts. In doing so, it frustrates the congressional purpose to regulate arrangements by which the public is invited to entrust its savings to the management of others in the expectation of sharing in speculative gains. Moreover, a denial of statutory protections to Flexible Fund participants involves a rejection of the salutary principles established by this Court in *Joiner, Howey* and *Ralston-Purina* and effectively deprives *VALIC* of most of its practical significance. If respondent's version of the variable annuity is exempt from regulation, virtually any insurance company is free to engage in the sale of shares in investment pools,

without complying with the federal securities acts, merely by making the proceeds of its investment program convertible into ordinary annuities and by offering some minimal guarantee at levels calculated to be largely without hazard. Given the great popularity of mutual funds and similar arrangements, it is to be expected that many will follow where respondent has led and that a large class of investors may well find their savings guarded only by the essentially irrelevant protections of State insurance regulation. We cannot believe that Congress intended to leave so broad a gap in the federal regulatory scheme.

CONCLUSION

The judgment of the court of appeals should be reversed, and the case remanded for further proceedings (see note 8, *supra*, p. 14).

Respectfully submitted.

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DECEMBER 1966.

APPENDIX

1. The Securities Act of 1933 (48 Stat. 74, as amended, 15 U.S.C. 77a, *et seq.*) provides in pertinent part:

DEFINITIONS

Sec. 2. When used in this title, unless the context otherwise requires—

(1) the term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

* * * * *

EXEMPTED SECURITIES

Sec. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

* * * * *

(8) Any insurance or endowment policy or annuity contract or optional annuity contract,

issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

* * * * *

2. The Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. 80a-1, *et seq.*) provides in pertinent part:

GENERAL DEFINITIONS

Sec. 2.(a) When used in this title, unless the context otherwise requires—

* * * * *

(8) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his capacity as such.

* * * * *

(17) "Insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

* * * * *

(21) "Issuer" means every person who issues or proposes to issue any security,

or has outstanding any security which it has issued.

* * * * *

(27) "Person" means a natural person or a company.

* * * * *

DEFINITION OF INVESTMENT COMPANY

SEC. 3.(a) When used in this title, "investment company" means any issuer which—

(1) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

* * * * *

(3) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

* * * * *

(c) Notwithstanding subsections (a) and (b), none of the following persons is an investment company within the meaning of this title:

* * * * *

(3) Any bank or insurance company; * * *

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No. 428

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

SECURITIES AND EXCHANGE COMMISSION, *Petitioner*

v.

UNITED BENEFIT LIFE INSURANCE COMPANY

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF IN SUPPORT OF PETITIONER

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Dewing, *Corporation Securities* (1934) 22

Haussermann, *The Security in Variable Annuities*, Ins. L. J. June 1956, 382 .....24, 37

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Magee, *Life Insurance* (3d ed. 1958) 24, 26, 35

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

The National Association of Securities Dealers Inc., ("the Association") and Investment Company Institute ("the Institute") hereby move this Court, pursuant to Rule 42(3), for leave to file a joint brief on the merits as *amici curiae* in support of the Securities and Exchange Commission ("the Commission"). A petition for a writ of certiorari was granted on October 24, 1966.

The Association and the Institute participated below. With leave of the court of appeals, they filed a joint

brief as *amici curiae,* and with the Commission's permission shared its time for oral argument.

At issue is the availability of the insurance exemptions in the securities laws to a Flexible Fund contract. This, in turn, involves the construction of this Court's decision in *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Company,* 359 U.S. 65.

The Association was an intervenor in that litigation, supporting the Commission, and a petitioner for the writ of certiorari, which this Court granted.

The issue in this proceeding is of great importance to the members of both the Association and the Institute.* The Association is a creature of the securities laws. Its activities constitute an integral part of the Federal system of securities regulation, and include important regulatory functions in the sale of open-end investment company shares. Approximately 90 per cent of its 3700 broker-dealer members sell shares of open-end investment companies from time to time. The Institute is an association of 178 open-end investment companies with assets of approximately $32 billion, and also of 89 investment advisers and 79 principal underwriters to these investment companies. The membership of both organizations are subject to applicable regulatory requirements of the Securities Act of 1933, the Investment Company Act of 1940 and the Securities Exchange Act of 1934.

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* A joint motion of the parties to accelerate the trial of the case filed in the District Court on December 23, 1964, states (at pp. 2-3): "The present case raises an important issue. From the Commission's point of view, the decision in this case will have significant impact on the securities industry in general and on investment companies in particular."

The Association and the Institute are vitally concerned that the regulation of investment companies, of the securities they sell, and of those who sell the securities be uniform and be imposed fairly and without preference or discrimination. This case involves another attempt by an insurance company to engage in the securities and investment company business through the annuity medium without compliance with the securities laws.** The Flexible Fund Annuity, which will be offered in competition with the securities offered by members of the Association and the Institute, creates an investment medium which should not be sold unless the disclosure requirements of the Securities Act are satisfied. Its purchasers, like any investor in an investment company, should also have the protections afforded by the Investment Company Act. Those who distribute the Flexible Fund contract should, like any other dealer in securities, be subject to the disciplines of the securities laws.

In their joint brief below, the Association and the Institute presented an approach and argument which supplemented that urged by the Commission. It is noteworthy in this regard that the Commission was willing to allot part of its time for oral argument to the Association and Institute.

The impact of this Court's decision upon the members of the Association and the Institute will be direct

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** The Commission's Petition for a Writ of Certiorari stated (p. 14): "The effect of the decision below would be to permit insurance companies to sell shares in investment pools without complying with the statutes enacted by Congress for the protection of persons who purchase such shares. Almost any insurance company, including VALIC itself, could engage in the unregulated sale of such shares . . ."

and important. The Association and the Institute should be permitted to present their views with respect to the decision of the court below which directly affects the interests and business position of their members.

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December 1966

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UNITED BENEFIT LIFE INSURANCE COMPANY

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR AMICI CURIAE IN SUPPORT OF PETITIONER

STATEMENT

The Investment Company Institute and the National Association of Securities Dealers, Inc. are not concerned in this brief with the merits of the contract under consideration. In their opinion, it provides an arrangement that is embraced by the securities laws and, like other investment company securities, may only be offered in compliance with those laws. They

are vitally concerned that (1) in purchasing the securities of an investment company the public be afforded the protections of the federal securities laws, and (2) regulation of investment companies and of the securities they sell be imposed uniformly and without discrimination among competitors.

An annuity and an insurance company have certain exemptions from the securities laws. This case involves another effort by an insurance company to employ the annuity umbrella for a common stock investment program. The base for the traditional fixed dollar obligations of insurance companies is fixed income securities. With inflation and the rising cost of living, insurance companies have designed programs to provide a purchaser, at his risk, with a participation in a common stock portfolio, on the premise that such stocks will rise during a period of inflation. The arrangement here is essentially an old package, in a new wrapping, that has been offered by others for some years now without denying investors the protections of the Securities Act of 1933 and the Investment Company Act of 1940.

An investment company is essentially a portfolio of securities in which investors have a participation. One form of investment company is the open-end type or, as it is commonly referred to, a mutual fund. A mutual fund makes a continuous offering of its shares, with the price determined by the value of the fund at the time of the offering. The fund stands ready to redeem its shares on the same basis. Its portfolio is managed by an investment adviser who is compensated in the form of a fee which is a percentage (often ½ of 1% annually) of the value of the assets of the fund.

A periodic payment plan for purchase of investment company shares provides a means for accumulating shares of the company over a period of years on the installment basis. One of the abuses found by the Congress in the sale of these plans prior to the passage of the Investment Company Act was the effort by some companies to liken them to insurance plans, which were associated in the public mind, and correctly so, with fixed dollars and assured interest return. This is not the nature of a periodic payment plan, however. A holder of such a plan may receive more or less than his payments depending upon the investment experience and resulting values of the portfolio or fund in which he invests.

The holder of a Flexible Fund contract (PX. 2, R II-2) offered by United Benefit Life Insurance Company ("United"), which is fully described in the brief of the Securities and Exchange Commission ("the Commission"), purchases on an installment plan an interest in a segregated fund of securities, primarily common stocks. The cash value of this participation, which is measured by and varies with the investment experience of the Flexible Fund account, may be withdrawn or later used to purchase a conventional fixed dollar annuity, with a provision for a minimum cash value that is never as much as the purchaser's deposits. The program is featured as an investment opportunity to gain through common stock investment.

SUMMARY OF ARGUMENT

In *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Company,* 359 U.S. 65 ("*Valic*"), this Court held that a variable annuity contract was an investment contract and not exempt

from the securities laws as insurance. The Flexible Fund contract, like the Valic contract, embodies an investment program. United offers the contract for investment purposes. Its stated attraction is the opportunity for gain, under United's management, from a continuation of the historical trend of rising common stock prices, with the contract holder bearing the investment risk involved. The Flexible Fund contract, unlike the Valic contract, does provide for a minimum fixed payment, but this does not render it "insurance" within *Valic*.

An insurance company traditionally guarantees to enhance the premiums paid by providing a fixed return or guaranteed yield on the premiums. The insured thus shifts to the insurer the risk of profitable investment of the premiums. During the accumulation period in a conventional annuity, the policy holder builds up a fund which he can either withdraw or apply to the purchase of an annuity, made up of (1) his net premiums and (2) the fixed return on the net premiums which the insurer guarantees. In an annuity context this aggregate is the principal for which the annuitant bargains and which the company assures.

United escapes this basic and substantial investment risk under the Flexible Fund contract. There is no provision for a guaranteed, fixed return during the accumulation period. The contract holder alone bears this risk of a return. He is thus cast in the role of the investor, which is the insurance company's traditional role. It is this assumption of investment risk by the contract holder which makes the securities laws applicable.

Valic held that "insurance" involves "some investment risk-taking on the part of the company" and that

"the issuer of a variable annuity that has no element of a fixed return assumes no true risk in the insurance sense." The *sine qua non* of "investment risk-taking" is a guaranteed "fixed return." A return is a yield on capital, as distinguished from a simple giving back of the capital itself. A contract, such as the Flexible Fund contract, that does not provide a fixed return or yield on premiums throughout its life is, therefore, not "insurance" within *Valic*.

As an economic medium from the purchaser's viewpoint, the Flexible Fund contract is simply a form of "split funding" program, offered by others for some years, for the accumulation of mutual fund shares and the purchase of traditional deferred fixed dollar annuity policies. The Flexible Fund contract differs only in that it homogenizes the two components and obscures their identity. Valic itself makes available what the Flexible Fund contract provides.

ARGUMENT

The Flexible Fund Contract Embodies a Security

In *Securities and Exchange Commission* v. *Variable Annuity Life Ins. Co.*, 359 U.S. 65, ("*Valic*"), this Court concluded that the variable annuity was an investment medium which could be offered only if investors were provided the disclosures which the Securities Act elicits to permit an informed investment judgment and that it was an investment arrangement that brought into play the added investor protections afforded by the Investment Company Act.[1]

[1] The provisions of both statutes are discussed in the Commission's brief and will not be repeated here.

The Valic contract, like the Flexible Fund contract, was cloaked in the terminology and formalities of a conventional annuity policy and was subject to state insurance regulation. The Valic contract provided, in substance, that installment payments made by purchasers would be invested in a portfolio of securities, principally common stocks, and that the amount of payments to be received by the purchasers on retirement, and the amount of the cash surrender value prior to retirement, would vary with the investment experience of the portfolio. It was contended that this arrangement, as United urges here with respect to the Flexible Fund contract, was encompassed by the exemption provided in Section 3(a)(8) of the Securities Act for an annuity contract, by the exemption in Section 3(c)(3) of the Investment Company Act for an insurance company and by the McCarran-Ferguson Act which preserves state regulation of insurance.[2]

The majority opinion in *Valic*[3] pointed out that the "question common to" these three statutory provisions "is whether respondents are issuing contracts of insurance" 359 U.S. at 68. It was urged that since the issuer assumed the risk of mortality (the obligation to make annuity payments as long as the contract holder lived), the variable annuity was insurance and that it was not necessary under an insurance arrangement that the company assume an investment risk. Both these arguments were rejected as more fully set forth below.

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[2] The text of these statutory provisions is set forth in the Commission's brief.

[3] Two Justices who joined in the majority opinion also joined in a concurring opinion. Four members of the Court dissented in a separate opinion.

Since the variable annuity, stripped of its formalities, was an arrangement by which a person committed his funds to management by others and looked to their efforts for his profits, the variable annuity was a security. One again the breadth of the statute's sweep was reaffirmed. The Court called attention to its earlier definition in *S.E.C.* v. *Howey Co.*, 328 U.S. 293, 298-299, of an investment contract, specifically referred to in the statute as a security:[4]

> ". . . an investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise."[5]

Since the variable annuity was a security, it followed that the Investment Company Act applied because the arrangement was an investment medium providing an

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[4] Section 2(1) of the Securities Act and Section 2(a)(35) of the investment Company Act contain identical definitions of the term "security".

[5] In the *Howey* case, the investment contract encompassed an offering of a unit of acreage in a citrus grove, coupled with an offer by an affiliated company to service the acreage for the purchaser.

Previously, in *S.E.C.* v. *Joiner Leasing Corp.*, 320 U.S. 344, 352-353, in holding that an offering of oil leases coupled with the assurance of the drilling of a test well so located as to test the oil-producing possibilities of the offered leaseholds was an investment contract, the Court stated:

> "The test rather is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect."

interest in a managed portfolio of securities. This is precisely the type of investment vehicle which the statute denominates as an investment company in whatever mold it is cast. As conceived by the statute, investment companies essentially "are large liquid pools of the public's savings entrusted to management to be invested."[6] They "provide a medium for public investment in common stocks and other securities."[7]

The Flexible Fund contract, like the Valic contract, embodies an investment program emphasizing common stocks to which the purchaser looks for profit. United's sales brochure (PX. 3, R II-10), discussed more fully below, speaks of three steps necessary to build "a balanced and adequate estate . . . (1) save, (2) insure, (3) invest." The brochure then states that "a new idea has been developed that combines these three essential steps into one simple plan." The brochure explains that the contract "combines this new method of accumulation" (i.e., investment in common stocks which "gives the policy owners the opportunity for a greater return on the accumulated deposits and a chance to share in the growth of the country's economy") "with the time tested advantages of a lifetime annuity." (R II-12) United's newspaper advertisements on the contract carry the banner "New Opportunity for Financial Growth" (PX. 6; R II-26). But Congress did not intend the Section 3(a)(8) exemp-

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[6] H. Rep. No. 2639, 76th Cong., p. 6 (1940) accompanying H. R. 10065 which the House of Representatives passed.

[7] S. Rep. No. 1775, 76th Cong., p. 2 (1940) accompanying S. 4108 which the Senate passed.

Prudential Insurance Co. v. *S.E.C.*, 326 F. 2d 383 (C.A 3), *certiorari denied*, 377 U.S. 953, affirmed a Commission determination that a segregated account created by a life insurance company for the sale of variable annuities is an investment company.

tion for a contract with this investment purpose. The reason for the exemption was explained as follows when the Securities Act was passed:

> "The insurance policy and like contracts are *not* regarded in the commercial world as securities *offered to the public for investment purposes.*" (Emphasis added)[8]

The majority opinion in *Valic* pointed out:

> "The standards for investment of funds underlying these [traditional fixed dollar] annuities have been conservative. The variable annuity introduced two new features. First, premiums collected are invested to a greater degree in common stocks and other equities. Second, benefit payments vary with the success of the investment policy." 359 U.S. at 69.

Here United anticipates that approximately two thirds of the Flexible Fund Account will be invested in equities.[9] It acknowledges that the contract provides "Variable benefits until maturity."[10] While the an-

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[8] H. Rep. No. 85, 73d Cong., p. 15 (1933).

[9] In Defendant's Responses to Supplemental Requests for Admissions, filed July 15, 1963, United (at p. 23) admitted that "at the time 'Flexible Fund A account' was established, the defendant believed that consistent with its guarantee, approximately one-third of the money in the 'Flexible Fund A account' should be invested in fixed dollar securities and that approximately two-thirds should be invested in equities." This response was not included in the excerpts of the pleading printed in the record (R II-99).

[10] United in a letter of May, 1962, to a state insurance commissioner stated:

> "Up to now, we have found rather general acceptance of the word 'Flexible' as having the same connotation as the word 'variable'".

United then offered to add the following to its forms:

> "Variable benefits until maturity." (PX, 10; R I-86).

nuity after maturity will be of a level dollar amount, that amount will vary too depending upon investment success and the consequent value of the Flexible Fund at the time of maturity.

The Flexible Fund contract differs from the Valic contract in only one essential respect, i.e., the promise of a minimum, fixed payment measured by net premiums.[11] This, in our view, affords no basis for distinction in the application of the securities laws because the Flexible Fund arrangement nevertheless embodies an investment contract. In *Valic* the fortunes of the contract holder depended upon the results of an investment fund, and it was held the issuer of the contract did not assume the investment risk contemplated by "insurance". When the contract holder, here as in *Valic*, albeit not in the same degree, becomes a direct participant in the investment experience of an investment fund, he assumes investment risks which are the target of the securities laws and trigger their application.

Before analyzing the *Valic* decision we shall discuss (1) the character of the investment risk traditionally assumed by an insurance company, (2) the shifting of this investment risk here to the contract holder, and (3) so called "split funding" programs for the accumulation of mutual fund shares and the purchase of traditional deferred fixed dollar annuity policies from which the Flexible Fund contract differs basically only in that it homogenizes the two components and obscures their identity.

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[11] The minimum represents 25% of the gross amount paid by the contract holder in the first year and increases thereafter but never can be as much as 95% of the gross amount paid (R II-3, para. 7). Over a 25 year period, the net premiums will be 91.58% of the total premiums paid (R II-13).

The Investment Risk in the Traditional Deferred Annuity Policy

The vice president and actuary of United, Dale R. Gustafson, in an affidavit filed by United in support of a motion for summary judgment, discussed certain commonly accepted principles of annuities. He pointed out, *inter alia*:

> "The annuity contract protects against the hazard that the annuitant will 'outlive' his *capital*. In both the instance of the life insurance contract and in the instance of the annuity contract *the insured transfers to the insurer risks* which without such transfer would remain the insured's risk." (Emphasis added. Aff. p. 6)

Elaborating on this matter of transfer of risks, Mr. Gustafson stated:

> "Whole life policies and annuity policies contain essential ingredients of risk transfer. From the insurer's point of view in each instance there is a transfer from the insured to the insurer of four basic risks which may be described as (1) death risk; (2) *investment risk;* (3) expense risk and (4) annuity risk.
>
> * * *
>
> "*Investment risk:* In the typical level premium policy issued by an insurer, . . . net premiums, that is, the gross premiums less expenses and charges, are invested and accumulated by the insurer. *The insurer guarantees the rate at which these net premiums will be accumulated throughout the life of the contract. The amount of such accumulation is the cash surrender value of the policy.* Thus, in the typical whole life contract the insurer guarantees an accumulation rate as set out in the contract not merely on amounts of net premiums presently held by the insurer but on amounts of net premiums to be received indefinitely in the future." (Emphasis added, Aff. p. 8).

Mr. Gustafson stated that in "the case of the policies other than the [Flexible Fund] policy, the investment risk is based on a provision obligating the Company to accumulate net premiums at a *fixed rate* (usually 2½ or 3 percent per annum)." (Emphasis added. Aff. p. 12) He further pointed out that under the conventional deferred annuity policy which United issues, it "obligates itself to accumulate amounts of net premiums at an accumulation rate equal to 3 percent per annum" (Aff. p. 10). The amount of this fixed return to which a company commits itself for the life of the contract varies in accordance with the investment risk or exposure that the company is prepared to assume. For example, during the course of this litigation, United increased the interest assumption or guaranteed, fixed return in its conventional annuity from 2½% to 3%.

During the period that the insurer makes annuity payments, it also assumes an interest rate on the principal used to purchase the annuity and thereby guarantees a fixed return. Each annuity payment includes principal and income on the unliquidated principal.[12]

In other words, in a retirement annuity the insurer obligates itself to enhance premiums by providing a fixed return or income throughout the life of the contract (and this is so even if there is no provision for a cash surrender value). This is its investment risk, which is at the very heart of the contract. The obligation of the insurer, as reflected, for example, in the cash value of the contract, is not limited to net premiums. An obligation restricted to net premiums does not satisfy the insurance concept of risk-bearing. It does not provide the guaranteed investment benefit that is

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[12] See Mehr and Osler, *Modern Life Insurance* (3d. ed. 1961) pp. 80-81 for the method of computing an annuity payment.

inherent in insurance. The insurance company is not simply a "strong box".

In view of these features, a retirement annuity during the accumulation period has been likened to a savings contract.[13] During this period the policy holder builds up a fund which he can either withdraw or apply to purchase an annuity. This fund or "capital", to use Mr. Gustafson's apt characterization, is made up of joint contributions by the insured and the insurance company: (1) net premiums paid by the insured and (2) the accumulated fixed return over the pay-in period to which the insurer obligates itself. In an annuity context it is this aggregate, rather than net premiums, which constitutes the policy holder's principal. This is the principal for which the annuitant bargains. His sole purpose in purchasing a deferred annuity is to be assured this principal, which is the base of his annuity payments and is liquidated during the pay-out period. This principal is not diminished if the insurer is unable to invest premiums on a basis which will produce the promised fixed return. The company has assumed, and the insured has shifted to it, this risk of profitable investment of the premiums. The policy holder is, therefore, not concerned with investment risk, the focal point of the securities laws, but only with the insurer's ability to meet its fixed obligations, which is the province of state insurance regulation.

The Investment Risk in the Flexible Fund Contract

Under the Flexible Fund contract, the holder is not assured the principal provided by the conventional deferred retirement annuity during the accumulation period. United does not obligate itself to enhance

[13] Mehr and Osler, *ibid*, p. 83.

premiums. Every purchaser of the Flexible Fund contract is required to agree in his application that:

> "I understand that the *growth* of the fund arising from my deposits *is not guaranteed, but will depend upon* the *investment results* of the securities purchased for this segregated fund." (Emphasis added. PX. 2. R II-8.)

The Flexible Fund contract holder, therefore, alone assumes the investment risk—and it is very substantial as we shall show—of a return, which is the obligation of the insurance company in a conventional deferred annuity policy. United escapes this risk and transfers it to the Flexible Fund contract holder. He does not have the assured savings arrangement, free of investment risk, which is the very purpose of a conventional deferred annuity. Instead, he is cast in the role of an investor with a direct interest in the investment experience of a managed portfolio of securities. And it is precisely for this reason that the Securities Act and the Investment Company Act have meaningful relevance and apply. As this Court observed in construing an exemptive provision of the Securities Act: "The focus of the inquiry should be on the need of the offerees for the protections afforded by registration." [14] Nor is the Flexible Fund contract holder any less an investor needing and entitled to the protection of the securities laws because United may have an investment risk under the minimum guarantee, a factor to which the court below gave controlling weight, without regard to the contract holder's risk as an investor, the touchstone of the securities laws.

The dollar consequences involved in the investment risk assumed by the Flexible Fund contract holder are

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[14] *S.E.C.* v. *Ralston Purina Co.*, 346 U.S. 119, 127.

very substantial. The record contains by way of illustration a Flexible Fund contract (PX. 2, R II-2) and a conventional deferred retirement annuity of United (PX. 7, R II-27), both of which assume a holder entering into a contract at age 35 and making monthly payments of $100 for 30 years for an aggregate of $36,000. At maturity, the purchaser of United's conventional annuity would have a fund of $54,828. This amount would be available, at the holder's option, either for withdrawal or as the principal to be liquidated through annuity payments. Of this amount $33,174 represents the contribution of the policy holder, i.e. his net premiums,[15] and the balance of $21,654 is the fixed return guaranteed by United. United thus assures the policy holder an aggregate fixed return amounting to 65% of his contribution. Under the Flexible Fund contract, United wholly frees itself of this investment risk. The investment risk instead is borne by the contract holder as an investor. He is assured only of $33,174, the net premiums. Whether he receives any more, or indeed even as much as the $36,000 he paid, is his risk alone with his fortunes determined exclusively by the investment results of the Flexible Fund.[16]

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[15] This assumes the same loadings in the fixed dollar annuity policy as in the Flexible Fund contract.

[16] Since under the Flexible Fund contract, a holder is not assured the accumulation of capital which is inherent in a conventional deferred annuity, he has, when measured by the minimum guarantee, suffered an impairment of capital. The magnitude of this impairment is shown by the fact that in the case of the illustrative Flexible Fund contract it would take another 17 years, at a compound interest rate of 3%, the rate currently used by United in computing annuity payments, before the capital under that contract at maturity ($33,174) would be equal to the cash value ($54,828) under a like term conventional annuity.

In these circumstances, to argue, as does United,[17] that whatever the Flexible Fund contract holder receives in addition to the minimum are "bonus benefits" is incredible. A contract holder who had paid $36,000 over a thirty year period and then found that he was entitled to only $33,174 would not view himself as having missed an "extra", but rather as having made a "bad investment", particularly if he knew that had he purchased a fixed dollar contract he would have been entitled to receive $54,828.

It is interesting to observe that while the purpose of a deferred annuity is to build up principal, the amount guaranteed under the Flexible Fund contract in comparison with that guaranteed under United's conventional deferred annuity becomes progressively smaller the longer the term of the contract. Thus, for example, the amount of the principal under the Flexible Fund contract in relation to the amount under United's conventional annuity policy is 83 percent at the end of the 10th year, then decreases to 76 percent, 71 percent and 66 percent, at the end of the 15th, 20th and 25th years, respectively, and is only 61 percent at the end of the 30th year.[18] Viewed in this posture, the Flexible Fund contract holder finds himself not only not shifting the conventional investment risk, but assuming a relatively bigger investment risk the longer the accumulation period. The same relationship manifests itself in the annuity payments. Thus, the Flexible Fund contract holder is in the anomalous position that the longer

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[17] Brief in opposition to certiorari, p. 21.

[18] United in its brief below (p. 2) stated that the Flexible Fund contracts issued at the time of trial provided for maturity dates, on the average, 24.6 years from their respective dates of issue.

he accumulates the lower is his assured monthly retirement payment relative to the conventional annuity.[19]

[19] The following table sets forth for the terms indicated in the text (1) the total premiums paid (2) the guaranteed cash value at the end of the term, which can be withdrawn or applied to the purchase of an annuity, under United's conventional fixed dollar annuity and the Flexible Fund contract, and (3) the monthly annuity payment at age 65 which would be provided by these cash values under Option A referred to by United in its brief in opposition to certiorari (i.e., if the annuitant dies before he receives 120 monthly payments, the balance of the 120 payments will be continued to his beneficiary):

	(1)	(2)		(3)	
	Premiums	Guaranteed Cash Values		Monthly Annuity Payment[c]	
Term	Paid	Fixed[a]	Flexible[b]	Fixed	Flexible
30	$36,000	$54,828	$33,174	$345.42	$208.99
25	30,000	41,928	27,474	264.15	173.09
20	24,000	30,792	21,774	193.99	137.18
15	18,000	21,180	16,074	133.43	101.27
10	12,000	12,504	10,374	78.78	65.36

[a] Based on PX. 7, R II-31 without deduction of a service charge for monthly payments.

[b] Based on PX. 2, para. 9, R II-3.

[c] Based on a monthly annuity payment of $6.30 per $1,000 of cash value. PX. 7, R II-30, 34; PX. 2, R II-5.

Furthermore, in the case of the Flexible Fund contract the aggregate of the 120 minimum payments guaranteed under Option A will never be as much as the premiums, either gross or net, paid by the contract holder, as is shown by the following table which sets forth the aggregate amounts for that contract and for the fixed dollar annuity for the terms stated above:

	Aggregate—120 Payments	
Term	Flexible	Fixed
30	$25,079	$41,450
25	20,771	31,698
20	16,462	23,279
15	12,152	16,012
10	7,843	9,454

In the face of these facts, it is startling to find United urging[20] that "the annuitant acquires the FFA to obtain the guaranteed lifetime income provided thereby."

The inducement offered to the purchaser of the Flexible Fund contract, and the fact that he is cast in the role of an investor, is made clear, for example, by the sales brochure, the instrument of disclosure and description which United employs and which each purchaser must agree in writing that he has read (R II-8). The investment feature of the contract is emphasized.[21] The attraction is the opportunity for gain, under United's management, from a continuation of the historical trend of rising common stock prices, with the contract holder bearing the risk involved.[22]

The message of United's president which opens the brochure states that the contract offers the "opportunity to share in the growth of our economy"; that the savings are invested and "these securities, particularly the common stocks, provide the growth factor so

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[20] Brief in opposition to certiorari, p. 21.

[21] The retirement feature is referred to as an "additional attraction" and as an "option" (R. II-12, 11).

[22] In the context of securities, the minimum guarantee is simply a "sweetener", which United anticipates should not expose it to any liability (although whether or not it does is irrelevant). It is not uncommon for a security to provide an added element as an inducement to an investor. This is also the purpose, for example, of a convertible feature added to a security. While the commonly known conversion privilege today permits a holder of senior securities to convert his position into equity securities, junior securities have been issued which permitted the holder to convert his interest to a senior position. See Dewing, *Corporation Securities*, p. 391 (1934). This suggests another way of viewing the instant arrangement. While in *Valic* the contract was simply an equity security, the Flexible Fund contract is an equity security with a convertible feature.

important to you during your 'savings years' "; that investments "are selected for quality and growth potential"; and that "this will, we believe, prove an ideal plan for those who wish the opportunity for substantial growth in their savings." (R II-11) The brochure then explains that deposits "can be invested largely in common stocks" which "gives the policyowners the opportunity for a greater return on the accumulated deposits and a chance to share in the growth of the country's economy." It is pointed out that this is "a new method of accumulation". (R II-12) The brochure answers the question "How Are the Investments Handled?" with the assurance that the contract "gives you the Benefit of full-time professional investment management" which "adheres" to certain "sound investment principles and methods" that are then set forth (R II-15). To dramatize the opportunity for sharing in the growth of the American economy and the dollar consequences of successful investment, charts with overlays are presented of the rising Dow-Jones stock averages over a quarter of a century and of "the Rate at which Money Grows" when advantageously invested (R II-16).[23] Next, the brochure urges the im-

[23] One chart shows that if $100 a month had been deposited monthly over the period for an aggregate of $30,000 and accumulated according to the Dow-Jones average it would have a value of some $180,000. If an investment company used such material, it would violate the Statement of Policy on the sale of investment company securities adopted by the Commission to implement the anti-fraud provisions of the securities laws (PX. 15, R II-93). While United professes not to be selling an investment company security, its "Sales School Outline" (PX. 4) contains a "What We Can and Cannot Say Memorandum" which summarizes the Statement of Policy and recommends "careful reading" of that Statement "for a clear-cut directive of what is suitable and what is not suitable for advertising and sales literature for any *investment fund*". (Emphasis added.)

portance of a long-range plan of investment, referring in this regard again to the "long-term growth of the economy", and pointing out that time is necessary to get the full benefit from "Dollar cost averaging", which is explained as "simply a method of investing" practiced "by experienced professional investors to help get the best results from long-term trends in the stock market." The prospect is assured that "regular" deposits make " 'Dollar cost averaging' principles work for you." (R II-17)[24]

This is the sales appeal of the Flexible Fund contract. It is to be appraised under the securities laws

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[24] As one insurance text writer points out, the "investment theory behind the variable annuity contemplates . . . the periodic purchase of common stocks following the principle known as 'dollar averaging.' Dollar averaging has been a practice long known to the investment industry." Magee, *Life Insurance* (3d. ed. 1958), p. 77.

An article cited in *Valic*, 359 U.S. at 71, note 12, Haussermann, *The Security in Variable Annuities*, Ins. L.J. June 1956, p. 382, concludes with the following observation (at p. 392):

> "They talk about the advantages of dollar-cost averaging by regular purchase of common stocks regardless of the level of the market. They talk about the participation in the expected growth of the American economy through ownership of common stocks. They talk about the investment results of investing in common stocks regularly during different periods and that such long-term regular investing minimizes the risk.
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> "This is not insurance talk; this is the talk of the securities salesman. This is the kind of talk he makes when attempting to interest a prospect in purchasing common stocks . . . [U]ntil certain insurance companies proposed to issue variable annuities this kind of talk was never heard from an insurance salesman attempting to sell insurance or annuities . . . [I]f you are going to describe a certain animal as very large, four legged, with a tail and a long trunk, you ought to be willing to call it what it is, namely, an elephant."

in that light. "In the enforcement of an act such as this it is not inappropriate that promoters' offerings be judged as being what they were represented to be".[25] The fact that the investment program offered is coupled with an annuity arrangement is no reason to deny vitality to the securities laws during the accumulation period and to deprive the investor of the meaningful and relevant protections they provide. As this Court has pointed out,

> "It [the Securities Act] embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of money of others on the promise of profits." *S.E.C.* v. *Howey, supra.* 328 U.S. at 299.

Moreover, the Flexible Fund arrangement by design provides for divisible and separate relationships. In the accumulation period, the holder's interest is in the Flexible Fund. His accumulated value, as United's actuary put it, is a "direct reflection of the investment experience" of the Flexible Fund (Aff. p. 26). On retirement his interest in the Fund terminates. His fortunes are no longer measured by the investment experience of the Fund. This severable nature of the arrangement is made clear on the face of the Flexible Fund contract (PX. 2; R II-2), which states:

> "Prior to the Maturity Date, the value of this policy is not guaranteed other than as specifically provided herein, but will depend upon the investment experience of the Flexible Fund A.
>
> "After the Maturity Date, the benefits payable hereunder will be fixed in amount, and will no

[25] *S.E.C.* v. *Joiner Leasing Corp., supra,* 320 U.S. at 353.

longer depend on the investment experience of Flexible Fund A."

We turn now to a consideration of split funding, which is another way of analyzing the Flexible Fund arrangement, and reveals the program for what it is from a contract holder's viewpoint.

Split Funding

Writing in 1958, before the *Valic* decision, John H. Magee, in his text *Life Insurance* (3d. ed.), discussed the variable annuity and pointed out that its proponents advocated that an annuity program should provide a mix of both fixed dollar and variable annuities. In this connection he called attention to the fact that College Retirement Equities Fund, the variable annuity pioneer,[26] was set up as part of a retirement annuity plan under which a participant could apply from one quarter to one half of his total contributions to the purchase of a variable annuity and the balance to the purchase of a fixed dollar annuity. The text then continues (at pp. 78-79):

> "*Fixed Return Annuity Combined with Equity Investment*—A unique plan has been offered that undertakes to attain the end sought by the variable annuity. It combines an investment in a fixed income deferred annuity and an investment in equity securities by the purchase of shares in a mutual fund.
>
> Both the deferred annuity contract and the systematic accumulation feature of the plan require regular payments. These may be monthly, quarterly, or annually. The proportion of income devoted to each is optional. The payments on the

[26] See *Valic*, 359 U.S. at 69.

deferred annuity go directly to the life insurance company as they are made. The payments made to purchase stock in the mutual fund go directly to the fund management. This fund provides for the automatic reinvestment of any distribution paid with respect to stock accumulated. On reitrement date, which is ordinarily the same date as that selected for the maturity of the deferred annuity contract, all or any portion of the accumulation in the mutual fund may be used to purchase a single payment annuity contract. These, in turn provide for optional incomes at rates guaranteed as of the date the annuity was purchased.

Under the plan, for example, an investor could pay $50 a month on a deferred annuity contract and $50 a month to the mutual fund to accumulate an amount for the purchase of a single payment annuity at the date of retirement. The deferred annuity contract would guarantee a fixed-dollar annuity. A single payment annuity purchased from the funds accumulated by the mutual fund would, of course, vary with the amount of accumulation."

Although the text does not identify the companies involved, the reference in all likelihood was to a combination program for the purchase of a conventional deferred fixed dollar annuity and an accumulation of investment company shares first offered in 1957 by Standard Life Insurance Company and its affiliate Advisers Fund, Inc., a mutual fund subject to both the Securities Act and the Investment Company Act. Purchasers of the investment company shares can convert their shares, at no additional cost, into a fixed dollar annuity based upon an annuity table guaranteed at the time the shares were purchased. The program is known as the Retirement Equity Accumulation Program ("R.E.A.P.") and now also includes conventional life

insurance.[27] A sales brochure in the Commission's public files explains:

> "R.E.A.P. is a modern investment concept of using variable and guaranteed dollars to provide a balanced financial program. It offers you the opportunity to hedge against inflation, through the accumulation of variable dollars, as well as deflation by accumulating guaranteed dollars, with the ultimate goal of building a retirement income."

Currently, there are various combination arrangements offered to provide by means of split funding, as it has come to be known, (1) "guaranteed" dollars through the purchase of conventional life insurance products which can be used to provide fixed dollar annuities and (2) "variable" dollars through the purchase of mutual fund shares.

As an economic medium from the purchaser's viewpoint, the Flexible Fund contract is simply a form of split funding. This is evident when the Flexible Fund arrangement is recast in terms of a package consisting of United's conventional fixed dollar annuity and mutual fund shares. The following table sets forth (1) the minimum cash value under the Flexible Fund contract at the end of stated terms assuming premiums annually of $1,200, (2) the amount of annual premiums that would have to be paid under United's conventional fixed dollar annuity to provide the same cash value, (3) the percentages this premium represents of the total annual payment, which percentages are identical to those reflecting the relationship of the minimum guarantee under the Flexible Fund contract to the cash value under United's conventional annuity presented

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[27] See Wm. H. O'Brien, *Static Dollars? Dynamic Dollars? Why Not Have Both,* Investment Dealers' Digest, Mutual Fund Supplement Section, p. 56, April 25, 1960, for a description of the program.

above, and (4) the balance, stated in percentages, of the total premium that would be available for the purchase of mutual fund shares, which is a measure of the investment or risk factor:

Term	Minimum Cash Value	Annual Premium: For Fixed Dollar Annuity[a]	Annual Premium: As % of $1,200 Payment Annually	Balance Available for Mutual Fund Shares
30	$33,174	$726	60.5%	39.5%
25	27,474	786	65.5%	34.5%
20	21,774	849	70.8%	29.2%
15	16,074	911	75.1%	24.9%
10	10,374	996	83.0%	17.0%

[a] Based on PX 7, R II-31.

From the purchaser's viewpoint, this analysis is a realistic appraisal of the Flexible Fund contract and reveals it for what it is.[28] Viewed in this light, should the purchaser of the Flexible Fund contract be any less a ward of the securities laws than the purchaser of a combination package under a split funding arrangement? Both arrangements offer the identical medium. The Flexible Fund contract differs only in its opaque wrapping which obfuscates the identity of the components clearly revealed in split funding. Split funding is a single program that takes the form of two integrated contractual arrangements; the Flexible Fund plan embodies the same program in one contract. The substance is the same, only the form differs. In the securities laws "[f]orm was disregarded for substance and emphasis placed upon economic reality,"

[28] Since the concept of "variable" dollars is designed as a hedge against inflation through the increase in common stock prices, the mutual fund component should be greater the longer the term of the split funding.

as this Court pointed out in *Howey, supra,* 328 U.S. at 298. Because United has homogenized and thereby obscured the severable ingredients of split funding is no reason to exempt the investment company feature of the Flexible Fund contract as an annuity.

Indeed, Valic itself makes available under the aegis of the securities laws a combined package which can be used precisely as the Flexible Fund contract. According to Valic's Securities Act prospectus for its variable annuity, Valic offers combined deferred annuity contracts. Under such contracts from 20 percent to 80 percent of the purchaser's payments may be applied to the variable component and the balance to a fixed dollar annuity. Since the contract holder may elect at retirement to purchase a fixed dollar annuity with the proceeds of his variable investment, his annuity can be wholly of the fixed dollar type, just as provided here.[29]

The Valic Decision

From its brief in opposition to certiorari we assume that United has abandoned its thesis, unsuccessfully urged in the court below, that under *Valic* an insurance product is involved so long as the "annuity provides some level of fixed installments during the income payment period", "that the level of retirement income is irrelevant", and that "the presence or absence—as

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[29] It may be noted that a Valic brochure filed with Commission in February 1963 shows that a 65/35 combination of fixed and variable contracts purchased at age 40 with annual premiums of $1,200 for 25 years would provide a "fixed guaranteed surrender value" of $25,946. As shown above, the 25 year term Flexible Fund contract reflects approximately the same mix with a comparable cash surrender value. See note 18, *supra.*

Spellacy v. *American Life Ins. Co. Assoc.*, 144 Conn. 346, 131 A2d 834, referred to in *Valic*, 359 U.S. at 71, also dealt with a combination package.

well as the level—of benefits available during the deferred period is equally irrelevant." [30]

United now apparently embraces the view of the court below, which concluded that *Valic* "implicitly held that a company must bear a substantial part of the investment risk associated with the contract, as well as the mortality and expense risks, in order to qualify its products as 'insurance'" (R I-112). The court found the assumption of this risk in the minimum guarantee (R I-113). As we have already indicated, the court's analysis suffers from a misplaced emphasis in failing completely to give weight to the substantial investment risk assumed here by the contract holder. This should have been the focal point of its inquiry. *Valic,* in our opinion, does not deny the investor protections of the securities laws to the Flexible Fund contract holder who is unquestionably a participant in, and bears the risk of, an investment program.

In *Valic* the majority of the Court stated:

> "The difficulty is that, absent some guarantee of fixed income, the variable annuity places all the investment risks on the annuitant, none on the company. The holder gets only a pro rata share of what the portfolio of equity interest reflects—which may be a lot, a little, or nothing. We realize that life insurance is an evolving institution. Common knowledge tells us that the forms have greatly changed even in a generation. And we would not undertake to freeze the concepts of 'insurance' or 'annuity' into the mold they fitted when these Fed-

[30] United's brief below, pp. 14, 16, and 17. Under this thesis, there would be an annuity within the concept of *Valic* if the illustrative Flexible Fund contract holder who had paid $36,000 over a 30 year period was, for example, assured at age 65 of a monthly annuity payment of only $10 (so that it would take 300 years of annuity payments to equal his deposits) or a minimum cash value of $1,587 which purchases such an annuity!

eral Acts were passed. But we conclude that the concept of 'insurance' involves some investment risk-taking on the part of the company. The risk of mortality, assumed here, gives these variable annuities an aspect of insurance. Yet it is apparent, not real; superficial, not substantial. In hard reality the issuer of a variable annuity that has no element of a fixed return assumes no true risk in the insurance sense. It is no answer to say that the risk of the declining returns in times of depression is the reciprocal of the fixed-dollar annuitant's risk of loss of purchasing power when prices are high and gain of purchasing power when they are low. We deal with a more conventional concept of risk-bearing when we speak of 'insurance'. For in common understanding 'insurance' involves a guarantee that at least some fraction of the benefits will be payable in fixed amounts. The companies that issue these annuities take the risk of failure. But they guarantee nothing to the annuitant except an interest in a portfolio of common stocks or other equities—an interest that has a ceiling but no floor. There is no true underwriting of risks, the one earmark of insurance as it has commonly been conceived of in popular understanding and usage." (Citations and footnotes omitted). 359 U.S. at 71-73.[31]

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[31] What the concurring opinion said of the contracts in *Valic* is equally applicable here:

"Accordingly, while these contracts contain insurance features, they contain to a very substantial degree elements of investment contracts as administered by equity investment trusts. They contain these elements in a way different in kind from the way that insurance and annuity policies did when Congress wrote the exemptions for them in the 1933 Act and the 1940 Act. Since Congress was intending a broad coverage in both these remedial Acts and since these contracts present regulatory problems of the very sort that Congress was attempting to solve by them, I conclude that Congress did not intend to exclude contracts like these by reason of the 'insurance' exemptions." 359 U.S. at 91.

The *Valic* language was, of course, directed to the contract in that case, and the Court was not considering a contract with other features. The fact, therefore that the foregoing passage contains language about the Valic contract which is not applicable to the Flexible Fund contract, is, in our opinion, not controlling. As we read the passage, in the context of the arguments that were being considered and rejected by the Court, it defines insurance in terms which the Flexible Fund contract does not satisfy.

The companies involved in *Valic* contended that the variable annuity was insurance because they assumed the risk of mortality. They insisted that "insurance" did not require that they assume any investment risk. Thus, for example, one company contended that the "risk of adverse investment results falls solely [in the case of the mutual company] or predominantly [in the case of the stock company] on the policy holders."[32] The other company argued that the "assumption of an investment risk by an insurance company is not an indispensable element or function of insurance."[33] The companies further argued that participating annuity policies, the exemption of which under the securities laws had never been challenged by the Commission, "manifestly were variable annuities."[34] A participating annuity policy, like a conventional annuity policy, embodies an assumed interest rate in both the accumulation and pay-out periods, and thus provides for a fixed return on the holder's contributions through the

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[32] Valic Brief, p. 36.

[33] Brief of Equity Annuity Life Insurance Company ("Ealic"), p. 9.

[34] Valic Brief, p. 43.

whole life of the contract. It was argued in *Valic* that in the participating policy the "assumed investment return was sufficiently low to eliminate any reasonable possibility that the company's results could fail to exceed it, and participation was substituted to permit the annuitant to share in dividends reflecting investment experience, mortality gains, and expense savings . . . The policy holder under such a contract shares in the investment results of the company in the same manner that the owner of the variable annuity does." [35]

In the quoted passage, the Court rejected the contention that the assumption of the risk of mortality by itself rendered the variable annuity an insurance arrangement.

Next, the Court dismissed the contention that the assumption of an investment risk by the company was not an indispensable element of insurance. It was, on the contrary, a necessary prerequisite; "the concept of 'insurance' involves some investment risk-taking on the part of the company."

The Court then defined the nature of this risk-taking and used language precisely delineating the difference between the Valic contract and the participating annuity, which the companies had argued were comparable. The Court stated that "the issuer of a variable annuity that has no element of a fixed return assumes no true risk in the insurance sense." The *sine qua non* of the "investment risk-taking on the part

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[35] Valic Brief, pp. 43-44. In the same vein, Valic argued (Brief p. 8) that the "distinction between the fixed-dollar annuity and the variable annuity is blurred when individual participating annuities are considered."

of the company" is its assumption of a guarantee of a fixed return. The presence of the fixed return in the participating annuity, and its absence in the Valic contract, was thus a critical distinction.[36]

When the Court spoke of a "fixed return" we assume it was using the term in its accepted insurance and financial sense. A "return" is a yield on capital, as distinguished from simply the giving back of the capital itself. In this context, the statement that "investment risk-taking" entails a "fixed return" means that the company guarantees interest on all net premiums; the investment risk which an insurance company traditionally assumes throughout the life of the contract and which United's actuary characterized as one of the basic risks shifted to the insurer by the insured.

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[36] "The idea [of the participating annuity] is to guarantee payments based upon more conservative interest and mortality rates than had hitherto been used, with a view to returning to annuitants any saving over the calculations in the form of dividends." These dividends are "not actually a return from investment income, but rather the return of an excess collected over and above the actual needs. Dividends, therefore, are not profits in any proper sense. They represent a yearly return of an overcharge in the premium. This overcharge, made in the interest of safety, is paid back as soon as an excess is definitely established." Magee, *supra*, at pp. 66-67, 584. "These dividends reflect the difference between the premium charged for a given class of policies and the actual cost of these policies as experienced by the company. • • • Dividends distributed to participating policy holders are not profits in a commercial sense, but instead are a return of an overcharge of premium". Mehr & Osler, *supra*, at p. 205.

As was pointed out in the concurring opinion, participating "contracts are sold as fixed-dollar obligations" and the "company is not committed by its literature to perform part of the job of a common-stock investment trust." *Valic*, 359 U.S. at 90.

When the Court declared at the beginning of the passage quoted above, that "absent some guarantee of fixed income, the variable annuity places all the investment risks on the annuitant, none on the company", it cited two articles. Both articles contended that the variable annuity was not insurance because there was an absence of a guaranteed yield. One article stressed the fact that the issuer was not undertaking the traditional risk of an assumed interest rate, the fixed return, and that the contract holder was being exposed to the yield risk.[37] The second article pointed out that the holder of insurance assumes only the risk that the company may not be able to pay the guaranteed amounts, and that the variable annuity did not provide the traditional obligation of an insurance company to

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[37] Bellinger, Hagamann and Martin, *The Meaning and Usage of the Word "Annuity"*, 9 J. Am. Soc. Ch. L. Under. 261, 268 (1955). This article, which commented on a form of variable annuity which did not provide a full assumption of the risk of mortality, stated:

> "*A true annuity involves insurance—the assumption of risk on the part of the issuing company.* The issuing company assumes the risk (a) that the mortality of the group may be less favorable than anticipated at the time the annuity is issued and (b) *that the assumed interest rate used in computing the amount of the periodic payments may prove to be excessively liberal.* However, *in the case of the 'variable annuity', there would be no assumption of* either of *these risks on the part of the issuing corporation. Instead of a guarantee* of these two variable elements *there would be complete exposure of the participants* in the 'variable annuity' *to such loss as might be occasioned by inadequate yield from the investments* and from unfavorable mortality that might be experienced within the group." (Emphasis added)

improve the holder's payments at a specific rate of interest.[38]

As we read *Valic* it is the assurance of a yield that provides the "fixed return" and "guarantee of fixed income" referred to by the Court. This is the "conventional concept of risk-taking when we speak of insurance." The company then provides a "benefit" by guaranteeing the insured that he will have an increment on the funds he deposits, and there is a "true underwriting of risks." If at any time during the life of the contract the company shifts the investment risk for the return or yield to the contract holder, as United does here, the arrangement embodies an invest-

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[38] Haussermann, *The Security in Variable Annuities, Ins.* L. J. June 1956, 382-385, 387 states:

> "Insurance in the legal and accepted definition of the term guarantees a fixed-dollar return. *The insured* in taking out any of these types of contract *assumes no risk other than the ability of the insurance company to pay the guaranteed amounts.*" (Emphasis added)

The article also contained the following statement of a principal executive of a major insurance company:

> "Risk is the basis of every contract issued by life insurance companies . . . Practically every life insurance operation binds the insurer to set aside a substantial portion of the consideration as a reserve to guarantee performance. *By contract this reserve must be improved at a specific rate of interest. There is no such protection behind the variable annuity contract. There is no contractual obligation to improve the policyholder's consideration.* In life operations the company actually assumes a risk. In the variable annuity it substantially avoids risk." (Emphasis added)

ment contract and its purchasers, as investors, are entitled to the protections of the securities laws.[39]

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[39] There need not be the concern referred to by the court below that if *Valic* is read as here urged that annuity policies will be restricted to their current form, which the court considered, as contravening an "explicit warning" of *Valic*. This concern does an injustice to the ingenuity of American business. One company has already fashioned an investment annuity with respect to the payout period which is not subject to the securities laws. In effect, under this arrangement the annuitant creates an irrevocable fund, which may consist of a portfolio of securities, to provide a life annuity from the insurance company involved; the annuitant, and not the insurance company, manages the portfolio and he is at all times free to sell, buy or hold securities, as he pleases; the insurance company performs only insurance functions and by contract prescribes (1) a schedule of guaranteed annual premium rates to be paid from the annuitant's fund, cast in terms of a percentage of the value of the fund at each annual premium date, and (2) a schedule of payments to the annuitant for the ensuing year, cast in terms of a fixed dollar amount for each $100 of annual premiums paid; on the annuitant's death, the insurance company acquires as a terminal premium any remaining balance in the fund. In essence, the annuitant dedicates a fund and during his lifetime annually purchases with premium payments from the fund a series of one year term conventional fixed dollar annuities, with the premium payment varying from year to year with the value of the fund as managed by the annuitant who receives an annuity which is simply a direct function of the permium payment. See prospectus of Investment Annuity Inc. for a fuller description of the arrangement.

CONCLUSION

For the foregoing reasons, the decision of the court below should be reversed.

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December 1966

SUPREME COURT, U. S.
DEC 30
JOHN F. DAVIS

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October Term, 1966.

No. 428.

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

UNITED BENEFIT LIFE INSURANCE COMPANY.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

OPPOSITION OF RESPONDENT TO MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 428.

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

UNITED BENEFIT LIFE INSURANCE COMPANY.

OPPOSITION OF RESPONDENT TO MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

United Benefit Life Insurance Company, respondent herein, having withheld its consent to the filing by the Investment Company Institute and by the National Association of Securities Dealers Inc. of a brief as *amici curiae* in support of the position of the Solicitor General acting on behalf of the Securities and Exchange Commission, opposes the grant of the motion now made by these trade associations which represent the business interests of the securities industry.

The petition for certiorari herein which was filed by the Solicitor General on behalf of the Securities and Exchange Commission was granted on October 24, 1966. The Solicitor General filed a brief on the merits on December 20, 1966.

At issue herein is the question whether the court of appeals correctly held that the deferred annuity policy in question issued by respondent insurance company is not a security but an insurance product within the meaning of the Court's decision in the VALIC case (*Securities and Exchange Commission v. The Variable Life Insurance Company of America,* 359 U. S. 65). "The result in this case, as both parties recognize, is controlled by the Supreme Court's recent decision in the VALIC case" (Petition, p. 18).

The grounds for respondent's opposition are as follows:

1. The motion sets forth no facts or questions of law which movants believe will not be adequately presented by the parties. Supreme Court Rule 42(3).

As relates to movants' possible concern that the views of the Securities and Exchange Commission might not be adequately presented, respondent points out that the need for assistance for the Solicitor General and his staff (as well as for the General Counsel of the Securities and Exchange Commission and his staff) can hardly be assumed. The Solicitor General is, of course, competent to present adequately all facts and questions of law which are relevant. *Northern Securities Company v. United States,* 191 U. S. 555 (1903).

2. Consent to the filing of an *amicus* brief has been withheld by both parties.

Neither party has advised movants that it consents to the filing of a brief as *amici curiae.* Respondent

earlier withheld its consent, and movants do not aver in their motion that the Solicitor General has consented to the grant of the relief requested in the motion.

3. The views of the securities industry or the insurance industry are irrelevant.

Movants seek to present the view of the securities industry [1] with respect to the decision of the court below. These views—equally as would be the views of the insurance industry—are irrelevant to the Court's adjudication of the single legal issue before it. It would appear that this is also the position of the Solicitor General.

4. Movants do not seek to act as *amici curiae.*

Without ever having sought to intervene in the present case, movants seek to act—not as *amici curiae* —but as advocates. Movants do not seek to perform the basic function of an *amicus,* namely, advising the Court on the law to be applied. They seek merely to duplicate,[2] the argument contained in the brief of the Solicitor General.

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1. In their motion, movants assert (p. 4): "The Association and the Institute should be permitted to present their views with respect to the decision of the court below which directly affects the interests and business position of their members."

2. Upon movants representation that they would present "additional matters and arguments", the court below permitted the filing of an *amicus* brief. As noted in the present motion (p. 3), however, that brief presented an approach and argument which merely "supplemented" that of the Securities and Exchange Commission, and contained no additional matters.

The motion for leave to file a brief as *amici curiae* should be denied.

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December, 1966.

E COURT, U. S.

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IN THE

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v.

UNITED BENEFIT LIFE INSURANCE COMPANY.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

BRIEF FOR RESPONDENT.

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Miscellaneous: Page

A Symposium on Segregated Accounts, Proceedings of the Fifty-Fourth Annual Meeting of the Legal Section of the American Life Convention (1961) 17

Conwill, Recent Developments Affecting Federal Regulation of Variable Annuity Issuers, The Weekly Underwriter, Feb. 16, 1963 56

Fama, Random Walks in Stock Market Prices, Financial Analysts Journal, Sept.-Oct., 1965 36

H. R. 152, 73rd Cong., 1st Sess. (1933) 42

H. R. Rep., No. 85, 73rd Cong., 1st Sess. (1933) 42

Life Insurance Fact Book 1966 47

MacNaughton, Separate Accounts—Investment Year, American Life Convention, Legal Section Proceedings, 1963 18

Patterson, Legal Protection of Private Pension Expectations (1960) 46

Thornsjo, the Variable Dollar Frontier Revisited, Best's Life News (July 1966) 37

28th Annual Report of the Securities and Exchange Commission Fiscal Year Ended June 30, 1962 57

IN THE

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OCTOBER TERM, 1966.

No. 428.

SECURITIES AND EXCHANGE COMMISSION,
Petitioner

v.

UNITED BENEFIT LIFE INSURANCE COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

BRIEF FOR RESPONDENT.*

* Emphasis has been added by using bold face type in all quotations.

QUESTION PRESENTED.[1]

A life insurance company issues a deferred annuity contract (FFA)[2] identical in all essential respects except one with the conventional deferred annuity contract. The obligations of the insurance company in the FFA are stated, as found by the court below, in large part, in terms of guaranteed dollar amounts. The company underwrites: (a) all of the mortality risk over the entire duration of the contract; (b) all of the expense risk over the entire duration of the contract; (c) all of the annuitant's risk of losing principal (sum of the net premiums) over the entire duration of the contract; and (d) all of the annuitant's risk of improvement of principal during the entire income-payment period of the contract. The one respect in which the FFA differs from the conventional deferred annuity is that in the FFA—while the respondent guarantees the amount of principal underlying the contract—there is no guaranteed interest accumulation. In lieu thereof, the re-

1. Petitioner in its Brief has made a significant change in the form of the question. In the Petition the question asserted that in the FFA "the value of the purchaser's interest during the accumulation period and the size of the annuity available at maturity **depend** upon the value of a portfolio of securities." This original formulation was so unquestionably misleading that petitioner has reframed the question in its Brief (p. 2) to read, in the same context "* * * **depend in significant part** * * *" But petitioner's question, even as framed, bears little relation to the record or to the decision of the court below. Only the excess value of the FFA—the possible increases in values above the principal sum underlying the contract (100 per cent of net premiums after 10 years)—are related, and during the deferred period only, to the investment income from or the value of the underlying investments.

2. We refer to the contract in question as the Flexible Fund Annuity (FFA) as did the court below. The FFA is the "Annual Premium Flexible Fund Retirement Annuity" (PX 2; R. II 2-9).

spondent guarantees the formula of an empiric accumulation factor—which can result after maturity in fixed monthly payments for the lifetime of the annuitant in higher amount than that provided by the principal sum. The empiric accumulation factor can also result in a higher death benefit or cash surrender value upon termination of the contract during the deferred period.

The question presented is whether the court below correctly held that the FFA is an "insurance product" under the Court's decision in *Securities and Exchange Commission v. Variable Annuity Life Insurance Company of America, et al.*, 359 U. S. 65 (1959), where—in interpreting the exemption provisions of the Securities Act of 1933 for "annuity contracts" and "optional annuity contracts"; and the exemption provision of the Investment Company Act for "any insurance company"; and Section 2(b) of the McCarran Act which leaves the "regulat[ion] of the business of insurance" exclusively to the states—the Court held that to qualify its annuities as "insurance" products within the federal concept, an insurance company must (while underwriting all of the mortality and expense risks associated with the contract) guarantee that at least "some fraction" of the benefits will be payable in fixed dollar amounts, and that there must be "some investment risk-taking" on the part of the insurance company.

STATUTES INVOLVED.

The provisions of the Securities Act of 1933, 48 Stat. 74, as amended, 15 U. S. C. 77a, *et seq.*, and of the Investment Company Act of 1940, 54 Stat. 789, 15 U. S. C. 80a-1, *et seq.*, which are relied upon by petitioner, are set forth in an Appendix to petitioner's Brief (pp. 39-41). Section 2(b) of the McCarran-Ferguson Insurance Regulation Act, 59 Stat. 34, 15 U. S. C. 1012(b) provides:

> No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided,* That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

STATEMENT.

I. Introductory.

Petitioner filed a complaint (R. I 5-22) in the district court on October 1, 1962, claiming that the contract in question (FFA), a deferred annuity contract issued by the respondent, constitutes 2 unregistered "securities" within the definition in the Securities Act of 1933 (1933 Act), and that the respondent's investments underlying the FFA contracts comprise an unregistered "investment company" within the meaning of the Investment Company Act of 1940 (1940 Act).[3]

Respondent was incorporated in 1926 as an insurance company under the laws of the State of Nebraska—a legal reserve stock, life insurance company[4] (R. I 105). Respondent is subject in all of its operations to the supervision of the Director of Insurance of the State of Nebraska (R. I 105) and of the insurance commissioner (or similar official) of the District of Columbia and of the other 48 States in which it is authorized to do business (R. II 54),

3. Petitioner's complaint asserts, in pertinent part (R. I 5):

> 1. This is an action * * * to enjoin the * * * sale * * * of two types of securities neither of which is registered under the Securities Act of 1933, as amended: (a) certain participations in a fund of securities * * * which are being issued by the Flexible Fund A account and distributed by the defendant * * * and (b) guarantees of the securities issued by the Flexible Fund A account and distributed by distributed by the defendant. In addition, the Commission's action seeks to enjoin the defendant from distributing or redeeming any security issued by the Flexible Fund A account, or making any portfolio investments on its behalf, until that Fund is registered as an investment company * * *.

4. As of December 31, 1963, respondent's assets exceeded $458.4 million (R. II 38); its capital and surplus exceeded $60.2 million (R. II 39); and the face amount benefits of its contracts in force exceeded $3.2 billion (R. II 48).

and to examination by the various states through the National Association of Insurance Commissioners.

The district court dismissed the complaint, ruling (R. I 107) that the FFA is an "insurance product" within the Court's decision in *Securities and Exchange Commission v. Variable Annuity Life Insurance Company of America*, 359 U. S. 65 (*VALIC*). Petitioner appealed from the dismissal to the court below, which on March 10, 1966 in an opinion by Chief Judge Bazelon, affirmed the judgment of the district court (R. I 109-115). On October 24, 1966 the Court granted the petition for certiorari (R. I 119). On January 17, 1967 the Court granted a motion of the National Association of Securities Dealers Inc. and of the Investment Company Institute for leave to file a joint brief as *amici curiae* in support of petitioner.

II. The Proceedings in the Courts Below.

Respondent moved [5] in the district court on September 12, 1963 for judgment under Federal Rule of Civil Proce-

5. The respondent supported its motion for summary judgment in part with the following documents:

(i) Affidavit of Dale R. Gustafson, respondent's Actuary. The Brief of the *amici*, p. 15 *et seq.*, relies upon this affidavit.

(ii) Affidavit of N. Murray Longworth, then President of respondent, now deceased.

(iii) Respondent's Annual Statement for 1962 (Forms 1 and 1-S) (Documents nos. 5a, 5b, and 5c);

(iv) National Association of Insurance Commissioners Examination Report (1961) of respondent (Document no. 6);

(v) Defendant's Deferred Retirement Annuity [Form 523, Series 120L] (Document no. 8);

(vi) Copy of Resolution of respondent's Board of Directors, December 6, 1961, authorizing, under Nebraska law, the establishment of separate accounts in connection with FFA contracts and authorizing the transfer from general surplus of the respondent to the separate account of an amount not to exceed $175,000. Initial purchases were made in March-April 1962 of bonds ($60,300) and common stocks ($105,-173.81), at a total cost of $166,170.50. (Document no. 10).

dure 56, on the ground that there were no relevant issues of material fact and that respondent was entitled to judgment, as a matter of law, under the Court's *VALIC* ruling. Petitioner opposed the motion, and the district court (McGarraghy, J.) denied it (R. I 2). Trial was commenced on March 15, 1965, in the district court (Curran, J.). Petitioner rested its case on the same day. Petitioner conceded in the district court that while in *VALIC* there was "no floor", in the FFA there was a floor, the guaranteed minimum cash value (R. I 51); that the annuitant "can't wind up with nothing. There is a guarantee * * * [of] a certain minimum which, in turn, is bound to purchase a certain amount of annuity based on the annuity tables" (R. I 52).[6]

After petitioner rested its case, the respondent moved to dismiss the action under Federal Rule of Civil Procedure 41(b) (R. I 103). The district court granted the respondent's motion, finding that in the FFA the respondent "* * * guarantees to the annuitant a fixed dollar equal monthly retirement income after the maturity date is reached, which income cannot be outlived" (R. I 76). The district court held that the FFA "is, therefore, an insurance product within the interpretation of *VALIC*" (R. I 77).

The court of appeals affirmed. It found that in most respects the FFA and the conventional deferred annuity are identical. It found that the only meaningful difference between the two contracts is that the FFA does not guarantee a fixed interest on the accumulation of net premiums during the deferred period, but offers, in lieu of such a

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6. The colloquy between the district court and petitioner's counsel continued (R. I 52):

The Court: That is not *VALIC*, is it?

Mr. North: It is not *VALIC* in the sense that it could drop to zero.

The Court: *VALIC* could.

Mr. North: That's right.

fixed accumulation factor, an empiric accumulation factor which reflects the actual investment rate realized by respondent on the investments underlying the FFA—while at all times, guaranteeing the principal sum underlying the contract, the accumulation of net premiums themselves (R. I 110). The court of appeals pointed out that both the majority and concurring opinions [7] in *VALIC* implicitly held that an insurance company must bear a substantial part of the investment risk associated with the contract, as well as the mortality and expense risks, in order to qualify its products as "insurance" (R. I 112). The court below found that respondent in the FFA assumes: (a) all of the mortality risk; (b) all of the expense risk; and (c) not only a substantial part, but by far the major part, of the investment risk over the duration of the entire policy (R. I 114). The court concluded that "The obligations of United under the FFA, unlike those of the variable annuity, are stated, in large part, in terms of guaranteed dollar amounts; there is a substantial and meaningful 'floor' to the FFA policy. We therefore conclude that the FFA is an 'insurance' contract and as such beyond the scope of federal regulation under the 1933 and 1940 Acts" (R. I 114-115).

III. The FFA Contract.

A. In General.

The FFA is a deferred (or optional)[8] life annuity.

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7. The four members of the Court who dissented in *VALIC* were of the opinion that the variable annuity is an "insurance product", 359 U. S. 93-101. They were of the view that (at 96):

> * * * It is certainly beyond question that the "mortality" aspect of these annuities—that is the assumption by the company of the entire risk of longevity—involves nothing other than classic insurance concepts and procedures * * *.

8. The term "deferred" annuity is synonymous with "optional" annuity. Congress not only exempted "any annuity contract" but specifically any "optional annuity contract" (1933 Act, § 3(a)(8)).

The FFA and the respondent's conventional deferred life annuity contract (PX 7; R. II 27-34) (which petitioner concedes is an insurance product) are based upon identical principles. During the income-payment period the FFA and the conventional deferred annuity are both premised upon an accumulation factor equal to a guaranteed 2½ per cent interest per annum. In both the respondent assumes all of the mortality and expense risks over the entire duration of the contracts. In both the respondent provides for a fixed death benefit equal to all of the premiums paid. In both respondent provides for a cash surrender value during the deferred period.

The only meaningful difference between the FFA and the conventional deferred annuity lies in the precise nature of the accumulation factor utilized in the FFA during the deferred period. In lieu of a guaranteed interest factor (fixed but limited) as in the conventional annuity, the FFA uses an accumulation factor which is related to the actual net investment rate realized by the respondent on its investments underlying the FFA. Thus, the FFA can be regarded, as the court below found, as an "extension or development or the concept of participating insurance" (R. I 115, note 11).

The FFA guarantees a fixed dollar monthly income after maturity. The payments will be higher if the accumulated cash value—based on the empiric accumulation rate—is higher than the fixed (guaranteed minimum) cash value at maturity.

We analyze first the fixed values—then the possible excess values of the FFA.

B. The FFA Provides for a Fixed (Guaranteed) Monthly Income Measured by the Life of the Annuitant.

The respondent agrees to pay to the annuitant, beginning on the maturity date, a fixed dollar payment each month for the duration of his life, in such amount as the cash value of the FFA contract will then provide under the contract table (PX 2; R. II 5)—"Table of Annuity Options". This is a table, actuarially computed, of monthly payments under certain options [9] for each $1,000 of cash value on the maturity date; it is identical with the table used by the respondent in its conventional deferred annuity.[10]

The minimum monthly amounts payable after maturity is reached are based upon the fixed (guaranteed minimum) cash value. The fixed cash value (PX 2, § 9; R. II 3) is determined by applying an appropriate percentage to the sum of the net premiums. After 10 years the fixed cash value of the FFA equals 100 per cent of the net

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9. The FFA contains (PX 2; R. I 5) 3 optional plans of income payment, one of which must be elected by the annuitant. Option A provides for:

> *Life Annuity, 120 months guaranteed*—Equal monthly payments shall be made for a minimum guaranteed period of 120 months and for as long thereafter as the Annuitant lives. If the Annuitant dies before annuity payments have been made for the said minimum period, annuity payments will be continued for the remainder of said minimum period to the beneficiary.

We assume in all examples used herein that the annuitant has elected Option A.

10. The form of the conventional deferred annuity which the respondent was issuing at the time of the respondent's motion for summary judgment, Form 523, Series 120L. (A specimen of this policy appears as Document no. 8 of the documents submitted with the moving papers in support of the respondent's motion for summary judgment. See note 5 above.) A newer series (PX 7; R. II 27-34) was issued thereafter, containing liberalized interest assumptions and modernized mortality assumptions.

premiums;[11] prior to the 10th year the fixed cash value of the FFA equals an increasing percentage[12] of the net premiums.

In the example[13] of a male, age 35, paying a monthly premium of $100, with Option A elected as the plan of payment and with a maturity date at age 55—the annuitant will receive minimum monthly payments of $109.09, computable from the contract, for as long as he lives. With a maturity date at age 60, the annuitant will receive min-

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11. Net premiums are defined in the FFA as the following percentages of the premiums paid for respective policy years (PX 2; § 7; R. II 3):

Policy Year	*Percentage of Premiums Paid*
1	50.0
2-10	90.5
11 and subsequent	95.0

The expense loadings thus built into the premiums for the FFA, amount to: 50.0 per cent in the 1st year; 9.5 per cent in policy years 2-10; and 5.0 per cent in the 11th policy year and thereafter. These are *identical* with the premium loadings in the respondent's conventional deferred annuity.

12. Prior to the 10th year the fixed cash value of the FFA is equal to an increasing percentage of the net premiums, as follows (PX 2; § 9; R. II 3):

Premiums Paid for Policy Years	*Percentage of Net Premiums*
1	50
2	55
3	60
4	65
5	70
6	75
7	80
8	85
9	90
10 or more	100

13. In the examples given herein it will be assumed throughout that the FFA has been issued to such a male, age 35, with Option A selected, and with a monthly premium of $100. We must assume (although it is not stated) that petitioner uses the same assumptions in its example (Brief, pp. 24-25).

imum monthly payments of $154.13 measured by the duration of his life. The following table shows for policy years 10[14] to 25,[15] the minimum monthly payments which the FFA will provide:

End of Policy Year	*Fixed (Minimum) Monthly Income*
10	$ 42.43
11	48.01
12	54.78
13	59.73
14	66.01
15	72.33
16	79.18
17	86.08
18	93.38
19	101.11
20	109.09
21	117.32
22	125.80
23	134.79
24	144.31
25	154.13

The foregoing amounts are minimums; no consideration has been given to the possibility of additional amounts of monthly income based on the accumulated cash value.

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14. The respondent will not issue an FFA with a maturity date less than 10 years from date of issue. Affidavit of D. R. Gustafson, p. 29 (note 5 above).

15. As of September, 1963, 148 FFA policies had been issued by the respondent providing for maturity dates (on the average) of 24.01 years from their respective dates of issue. *Ibid.*

C. The FFA Provides a Fixed (Guaranteed Minimum) Death Benefit During the Deferred Period.

The FFA provides for a fixed [16] death benefit under which the annuitant's beneficiary will receive an amount equal to 100 per cent of the premiums which have been paid (PX 2; R. II 2), as follows:

Death Occurring at End of Year	*Premiums Paid*	*FFA Fixed (Guaranteed Minimum) Death Benefit*
10	$12,000.00	$12,000.00
15	18,000.00	18,000.00
20	24,000.00	24,000.00
25	30,000.00	30,000.00

The FFA, as does the conventional [17] deferred annuity, gives to the annuitant (or to his beneficiary) the right to elect to have the death benefit paid under any one of 4 specified options.[18] These options require payments after death of the annuitant to the beneficiary at a guaranteed rate of 2½ per cent per annum on the sum of premiums paid or the accumulated cash value, whichever is higher.

16. If the accumulated cash value is higher than the sum of the premiums paid, the annuitant's beneficiary will receive the sum of the premiums paid **plus** the difference between such sum and the accumulated cash value.

17. Compare PX 7; R. II 33.

18. The options (PX 2; R. II 6) are:

Option 1:—Proceeds on Deposit at Interest

Option 2:—Income of a Specified Amount

Option 3:—Income for a Specified Period

Option 4:—Income for a Guaranteed Minimum Period and Life Thereafter

D. The FFA Provides for a Fixed (Guaranteed Minimum) Cash Surrender Value.

All states today have "nonforfeiture laws" which define the minimum amount which must be returned upon surrender of a life insurance policy.[19] Today also most companies issuing deferred annuities provide voluntarily by contract for cash surrender values—by analogy to the requirement for life insurance policies. The respondent's conventional deferred annuity contains such a provision (PX 7, § 18; R. II 31), as does the FFA (PX 2, § 9; R. II 3). The FFA provides for a fixed (guaranteed minimum) cash value and provides that "[a]t any time prior to commencement of Annuity Income, this policy may be surrendered and the Company shall pay the cash value to the Annuitant. The cash value shall be * * * not less than the following minimum amount * * *." In the case of an FFA with a monthly premium of $100 the fixed cash value for policy years 10 to 25 will be as follows, computable from the contract:

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19. Huebner and Black, Life Insurance (6th ed. 1964) p. 374, states:

> Although the practice of allowing a surrender value in some form is an old one, for many years the matter was entirely optional with the companies, with some companies voluntarily granting cash surrender values and others not granting them. All states today have so-called 'nonforfeiture laws' which define the minimum amount that must be returned upon surrender of a policy. Today, most companies provide surrender values in excess of the minimums required by law.

End of Policy Year	*Total Premiums Paid*	*FFA Fixed (Guaranteed Minimum) Cash Value*
10	$12,000.00	$10,374.00
11	13,200.00	11,514.00
12	14,400.00	12,654.00
13	15,600.00	13,794.00
14	16,800.00	14,934.00
15	18,000.00	16,074.00
16	19,200.00	17,214.00
17	20,400.00	18,354.00
18	21,600.00	19,494.00
19	22,800.00	20,634.00
20	24,000.00	21,774.00
21	25,200.00	22,914.00
22	26,400.00	24,054.00
23	27,600.00	25,194.00
24	28,800.00	26,334.00
25	30,000.00	27,474.00

E. Possible Excess Benefits Depending on the Accumulated Cash Value.

The fixed (minimum) benefits provided for by the FFA include: (a) monthly payments for life after maturity in guaranteed fixed dollars; (b) a death benefit before maturity equal to 100 per cent of the premiums paid; and (c) a cash surrender value equal (after the 10th policy year) to 100 per cent of net premiums. In addition to these fixed (minimum) benefits the FFA provides for possible *excess* benefits which depend upon the accumulated cash value.

If at maturity the accumulated cash value exceeds the fixed (minimum) cash value, the annuitant will receive the monthly payment provided for by the fixed cash value, in-

creased by any additional amounts provided for by the excess of the accumulated cash value over the fixed cash value. Amounts of accumulated cash value in excess of the fixed minimum cash value automatically will result in the payment after maturity of a higher level of monthly income than will be provided by the fixed cash value alone.

During the deferred period, the cash value of the FFA equals the fixed (minimum) cash value *plus* the excess of the accumulated cash value over the fixed cash value.[20] The accumulated cash value of the FFA is the accumulated value as of the end of the previous month multiplied by the monthly accumulation rate as determined by the respondent for such month on the basis of the relevant provisions of the contract (PX 2, § 8; R. II 3). At any time the accumulated cash value is the sum of the accumulation [21] of the successive net premiums paid. The monthly accumulation rate is an arithmetic formula (R. I 80-81), which shows: (a) the income received from the investments underlying the FFA, and (b) the change in the values of those investments, reduced by the allowance for the "actuarial margin" and a reserve for possible federal income (capital gains) tax of respondent. The monthly accumulation rate reflects the actual monthly experience of the respondent in connection with the investments which underlie the FFA, that is, respondent's investments which have been acquired with respondent's funds allocated to a separate account authorized by Nebraska law. This statute provides, in part, that "[a]mounts allocated by a life insurance company to sepa-

20. The FFA provides (PX 2, § 9; R. II 3):

* * * The cash value shall be the amount of accumulated value as of the last day of the previous month * * * but not less than the following minimum amount [the fixed value] * * *.

21. By "accumulations" is meant each net premium multiplied by each of the monthly accumulation rates subsequent thereto.

rate accounts * * * shall be owned by the company, and the company shall not be, or hold itself to be, a trustee in respect to such amounts."[22] In insurance terminology a separate acount is an "operational manner of proceeding" whereby an insurance company is enabled to perform its legally incurred obligations to a certain group of policyholders.[23]

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22. Revised Statutes of Nebraska, 1963 Cumulative Supplement [R. S. Supp., 1963] § 44-310.06. The FFA states (PX 2, § 6; R. II 3) that it is issued under the authority of a Nebraska statute which provides for separate accounting of the experience of a selected group of investments acquired with amounts allocated to a separate account known as Flexible Fund A account. Under Nebraska law life insurance companies are required to keep their participating and non-participating business in separate accounts, and to maintain complete separation between the accounts. Nebraska Reissue Revised Statutes of 1943 [R. R. S. 1943], § 44-708. R. S. Supp. 1963, § 44-310.06 provides:

> Any domestic life insurance company may, after adoption of resolution by its board of directors and certification thereof to the Director of Insurance, allocate to one or more separate accounts, pursuant to the provisions of applicable contracts, any amounts which are paid to such company in connection with a pension, retirement, or profit-sharing plan or annuity, and which are to be applied to purchase annuities or retirement benefits under such company's policies or contracts and to provide other benefits incidental thereto. The income, if any, and gains or losses, realized or unrealized, on each such account may be credited to or charged against the amount allocated to such account in accordance with such contract, without regard to the other income, gains, or losses of the company. The amounts allocated in such accounts and accumulations thereon may be invested and reinvested in any class of loans and investments authorized for domestic life insurance companies and such loans and investments shall not be included in applying the limitations provided in section 44-310.02. Amounts allocated by a life insurance company to separate accounts in the exercise of the power granted by sections 44-310.06 to 44-310.08 shall be owned by the company, and the company shall not be, or hold itself to be, a trustee in respect to such amounts.

23. A Symposium on Segregated Accounts, Proceedings of the Fifty-Fourth Annual Meeting of the Legal Section of the American Life Convention, p. 264 (1961). Some 35 states in 1963

The respondent's conventional deferred annuity during both the income-payment period and the deferred period, and the FFA during the income-payment period, is based upon an accumulation factor equal to a guaranteed 2½ per cent interest per annum. The accumulation factor (fixed interest), though guaranteed, is set comparatively low.[24]

If the accumulated cash value of the FFA is in excess of the fixed (minimum) cash value on the maturity date, the monthly lifetime payments will be higher. Further, if the annuitant dies and the contract terminates involuntarily —and the accumulated cash value exceeds the sum of the premiums paid—the annuitant's beneficiary will receive the higher amount (and will have the right to elect one of the 4 optional plans of settlement with respect to such higher amount). In the event that the annuitant voluntarily terminates his contract and elects to receive the surrender value thereof, and the accumulated cash value exceeds the fixed (minimum) value, he will receive the higher amount.

It may be expected that the retirement payments will commence on the maturity date selected. In the event of

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had legislation authorizing the use by life insurance companies of separate accounts in connection with individual or group contracts. D. S. MacNaughton, Separate Accounts—Investment Year, American Life Convention, Legal Section Proceedings, 1963, p. 33.

24. As the court below pointed out (R. I 114) in the case of a participating annuity the interest factor during the deferred period is deliberately set quite low so as to assure dividends. The FFA extends this principle, guaranteeing no interest, but guaranteeing a formula to reflect actual investment results—in return for the FFA contractholder's opportunity to realize the benefit, after maturity, of favorable investments achieved over the entire duration of the deferred period. In *actuarial* terms the FFA does guarantee a *fixed* interest factor during the deferred period—0 interest. This is a significant interest guarantee which protects the annuitant against the erosion of the principal sum, which could be caused by a net investment rate over the entire deferred period of a *negative* interest factor.

involuntary termination of the contract by death or of voluntary termination by election of the annuitant, the excess values generated by the accumulated cash value will be available, in addition to the fixed value, as a terminal dividend.

F. The FFA's Expense Allowances.

There are only two allowances built into the FFA contract to cover all of the respondent's expenses associated with the contracts: (a) the premium "loadings" (identical to those fixed in respondent's conventional deferred annuity); and (b) the "actuarial margin"—a monthly allowance of .083 per cent [25] of the value of the assets underlying the FFA. If the expenses connected with the FFA over the life of all the contracts (an FFA taken out for an infant might last 75 years or more) are not covered by these two contractual expense allowances—then the excess portion will have to be paid out of the respondent's surplus. If the experience of the respondent's investments underlying the FFA over the years of the deferred periods is favorable the actuarial margin will result in a larger dollar sum being available for expenses than would be otherwise. Thus the respondent's success in its investment policy applied to those investments will affect the respondent in a very significant way.

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25. The formula for the monthly accumulation rate makes provision, in effect, for an allowance of .083 per cent of the value of the underlying investments since it utilizes 99.917 per cent as a factor. The actuarial margin amounts per annum to .996 per cent of the value of the assets in the separate account.

IV. The FFA Contract Business, as an Integral Part of the Respondent's Operations, Is Subject to the Supervision of the Nebraska Director of Insurance and to Examination Through the National Association of Insurance Commissioners.

Petitioner makes but little reference to the documents which it put into the record in the district court, including the Annual Statement of the respondent (for 1963) which must [26] be filed each year under Nebraska law.

The respondent is subject in all aspects of its business (including FFA contracts) to the direct and plenary supervision of the Nebraska Director of Insurance (R. I 105). This is also exemplified in the respondent's Annual Statement for 1963: Form 1 (PX 8-A; R. II 35-66) and Form 1-S (PX 8-B; R. II 67-92), which forms are part of the record printed for use of the court below.[27] The Annual Statement for 1963 was, of course, prepared on the forms ("blanks") approved by the National Association of Insurance Commissioners. For 1963, Form 1-S had been devised by the Blanks Committee for the reporting of all transactions relating to any separate account business. The FFA contractholder has contractual claims against the respondent and all of the assets of the respondent are available to meet those claims; therefore, reference is necessary to both Form 1—as well as Form 1-S—to obtain a correct and complete picture of the FFA line of business.

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26. R. R. S. 1943, § 44-322. Also at least every 3 years the affairs of every insurance company operating in Nebraska must be examined in a so-called Association Examination. R. R. S. 1943, §44-107. (Such report for 1961 was submitted as Document no. 6 in support of the respondents' motion for summary judgment. See note 5 above.)

27. The Annual Statement for 1963 also includes Investment Schedules (PX 8-C) which were not included in the record prepared for use of the court below.

Form 1 includes in its totals for assets and liabilities of the respondent those amounts which are shown for reporting and regulatory purposes separately on Form 1-S. Form 1 shows [28] total assets of the respondent for the year ended December 31, 1963 of $458,467,439.38, and shows [29] separately of that total $286,290.33, as Separate Account Business and refers to Form 1-S. Form 1 shows [30] total liabilities of $398,263,025.66, and shows separately [31] of this total $114,281.78 as Separate Account Business. Form 1 shows [32] unassigned surplus of $54,204,413.73, which includes an amount of surplus in the separate account.

On each of the blanks of Form 1 there is a specific indication as to whether the page in question includes or does not include separate account items.[33]

Form 1-S (PX 8-B; R. II 67-93) was devised to present for reporting and regulatory purposes all possible information for all transactions related to any separate account. Form 1-S shows total assets of $286,290.33 (as was indicated on Form 1) comprised of bonds of a market value of $87,194.15, stocks of $196,465.42, separate account clearing of $46.36, and investment income accrued of $2,584.40.[34] Form 1-S shows liabilities of $114,281.78 (as was indicated on Form 1) of which $110,159.69 represents "[a]ggregate reserve for life policies and contracts"; $229.76 represents general expenses accrued and $3,892.33 represents federal

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28. PX 8-A, p. 2, line 26: R. II 38.

29. *Id.* line 25A.

30. *Id.* p. 3, line 26; R. II 39.

31. *Id.* line 25A.

32. *Id.* line 29.

33. Separate account items appear also on pages 4, 17, 34 and 45 of Form 1 (PX 8-A; R. II 40, 54, 58, 66).

34. PX 8-B, p. 2, lines 1, 2, 9, 19 and 26; R. II 70.

income taxes accrued on capital gains,[35] unassigned surplus is shown as $172,008.55.[36]

V. Respondent's Reserves for FFA Contracts.

As a legal reserve life insurance company the respondent operates under laws which specify the minimum basis for reserves maintained in connection with its contracts. The reserves maintained in connection with FFA contracts fall into two categories—policy reserves and other (non-policy) reserves. Policy reserves held for FFA contracts consist of (a) the aggregate accumulated cash values[37] of FFA contracts and (b) a contingency reserve[38] to cover the fixed (minimum) death benefit during the deferred period. The foregoing is in accord with the FFA contract which provides that during the deferred period the aggregate reserves for FFA contracts "shall be the sum of the cash values, increased by such contingency reserve as may be necessary to cover the minimum death benefit guarantee." (PX 2, § 13; R. II 4) and that during the income-payment period "the reserve shall be based on the 1937 Standard Annuity Table of Mortality rated down one year for males and six years for females, with interest at two and one-half per cent" (*ibid.*).

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35. *Id.* p. 3, lines 4, 15A, 26, 24, 30 and 31; R. II 71.

36. *Id.* line 29. This figure represents the amount remaining after the accumulated cash values of all FFA contracts have been computed. The respondent originally allocated $166,170. of general surplus to the separate account. The FFA contractholders have no "pro rata share" of the investments allocated to the separate account. The accumulated cash values of the contracts depends upon the monthly accumulation rates and the formula treats the original amount of $166,170. of surplus quite differently than the amounts of accumulated cash values of FFA contracts. No pro rata share computation is possible.

37. This appears as $110, 159.69 on Form 1-S, PX 8-B, p. 2, line 1; R. II 71.

38. Reflected in the figure shown on line 1, p. 3 of Form 1 (PX 8-A; R. II 39).

VI. State Regulation of the Respondent's Investments.

Nebraska law regulates the investments which are legal for life insurance companies and these provisions of Nebraska law apply to respondent's investments underlying the FFA.[39] Nebraska law authorizes the use of separate accounts, under which there is no limitation on the percentage of common and preferred stocks which may be acquired.[40] The separate account mechanism thus allows "flexible funding" of the respondent's contract obligations.

39. R. S. Supp. 1963, § 44-309(9)-(10) set up specific qualitative criteria as to preferred and common stocks which may be acquired by the respondent.

40. R. S. Supp. 1963, § 44-310.06; see note 22 above.

SUMMARY OF ARGUMENT.

A. The FFA contract is an "insurance product" within the Court's *VALIC* decision. The contract contains a guarantee that at least some portion of the benefits will be payable in fixed amounts and the respondent undertakes some investment risk. Having complied with this minimal federal standard, the FFA is exempt from federal regulation, and is subject exclusively to the control of the Director of Insurance of the State of Nebraska and of the commissioners of the other states. The respondent, also, in its business of issuing FFA contracts is subject exclusively to the control of the Nebraska Director of Insurance and to examination by the insurance commissioners of all states in which the FFA has been approved.

B. Within the more onerous test utilized by the court below, the FFA also is an "insurance" product. The respondent undertakes all of the mortality and expense risks over the entire duration of the contract. As to investment risk, the respondent guarantees the principal sum underlying the contract during the deferred as well as the income-payment period; the respondent guarantees an annual yield on the principal during the income-payment period of a fixed 2½ per cent, and guarantees the benefit after maturity, of practically all of the income and gains actually achieved on the underlying investments during the deferred period. In addition, the respondent guarantees a substantial fixed (minimum) cash surrender value for the FFA during the deferred period, an amount equal to all of the net premiums after the 10th year, and a substantial fixed (minimum) death benefit to the annuitant's beneficiary during the deferred period, an amount equal to all of the premiums. In both instances the amounts may be higher

by virtue of a terminal dividend reflecting the income and gains achieved on the underlying investments over the deferred period.

C. The FFA is a deferred (or optional) life annuity; it promises a guaranteed fixed (minimum) monthly lifetime income after the maturity date is reached. As such an annuity it falls directly within the provision of the 1933 Act excluding from its coverage "any annuity contract" or "any optional annuity contract." The respondent generally, and in its issuing of FFA contracts, falls within the provision of the 1940 Act excluding from its coverage "any insurance company." Both respondent and the FFA contract fall within the protective ambit of the McCarran Act which leaves the regulation of the business of insurance solely with the states. No intention can be imputed to congress that these exclusions should be removed in the event of an evolution in the annuity concept. Congress intended in enacting the 1933 Act, to exempt optional annuity contracts in any evolved form they might take. Congress exempted optional annuities issued on a participating basis, and no intention can be imputed to Congress that the exemptions should be removed because an insurance company issues an evolved form of participating annuity.

D. Petitioner's contentions are based upon a fragmentizing of the contract. Petitioner seeking regulation of only a portion of the FFA (and presumably of only those operations of respondent which relate thereto). Petitioner engages in the fiction of considering the sums which respondent must maintain for FFA contracts as assets which belong—not to the respondent—but solely to the contract holders. Petitioner ignores the basic relationship between the annuitant and the respondent which is that of creditor and debtor. The FFA holder has contract claims

against the respondent; all of the respondent's assets are available to meet those claims; the annuitant does not own any portion of the respondent's assets.

E. Petitioner seeks to impose all of the elaborate controls embodied in the 1933 and 1940 Acts upon respondent, because of the presence in the FFA of an evolved participation feature. This participation feature is subject to direct and meaningful regulation by the state commissioner. Federal controls are irrelevant; they would lead to the absurd result that the contractholders—not the respondent—would have the control of the respondent's investments underlying the FFA contracts. The FFA owner is not an investor; he is an annuitant. It is the respondent which is an investor; respondent is subject to the fluctuations of the securities markets. The respondent has underwritten all the investment risk which the annuitant would otherwise have during the income-payment period; it has underwritten the annuitant's risk of "losing" the principal sum underlying the FFA contract during the deferred period. Further, the very essence of the FFA is that the respondent has—in a practical sense—and identically with the issuer of a participating annuity, underwritten the risk of producing an investment rate during the deferred period which will make the product salable and competitive. The annuitant expects that the respondent will have the burden and responsibility for carrying on the investment function to produce a satisfactory yield—knowing that at all times his retirement income is safe.

ARGUMENT.

I. The FFA Is an "Insurance Product" Within the Meaning of the Court's *VALIC* Decision.

A. Under the Court's *VALIC* decision an insurance product exempt from the federal securities laws is one which involves "some" guarantee of fixed income, that is, a guarantee that at least "some" fraction of the benefits will be payable in fixed amounts.

1. THE COURT'S *VALIC* RULING.

In *VALIC* the Court said that the issuer of a variable annuity assumes the risk of mortality from the moment the contract is issued. It was this feature which the variable annuity companies stressed when they urged the Court to find that the variable annuity was an "insurance product", 357 U. S. at 70. But the Court held (*Id.* at 71-72):

> The difficulty is that, **absent some guarantee of fixed income**, the variable annuity places **all** the investment risks on the annuitant, **none** on the company. The holder gets only a *pro rata* share of what the portfolio of equity interests reflects—which may be a lot, a little, or nothing. * * *.

The Court pointed out also (*id.* at 71-73):

> * * * We deal with a more conventional concept of risk-bearing when we speak of "insurance". For in common understanding "insurance" involves a guarantee that at least **some fraction** of the **benefits** will be payable in **fixed** amounts. See Spellacy v. American

Life Ins. Ass'n, 144 Conn. 346, 354-355, 131 A. 2d 834, 839; Couch, Cyclopedia of Insurance Law, Vol. 1, § 25; Richards, Law of Insurance, Vol. 1, § 27; Appleman, Insurance Law and Practice, Vol. 1, § 81. The companies that issue these annuities take the risk of failure. But they guarantee **nothing** to the annuitant except an interest in a portfolio of common stocks or other equities—an interest that has a ceiling **but no floor. There is no true underwriting of risks**, the one earmark of insurance as it has commonly been conceived of in popular understanding and usage.

The majority of the Court in *VALIC* were of the view that if an insurance company develops an annuity contract in which the company makes "some" guarantee of fixed income after maturity, i.e., it guarantees that "some" fraction of the benefits will be payable in fixed amounts; such an annuity contract is an "insurance product" exempt from the federal securities laws.

Mr. Justice Harlan (dissenting), speaking also for Justices Frankfurter, Clark and Whittaker, was of the opinion (359 U. S. at 96) that "the 'mortality' aspect of these [variable] annuities—that is, the assumption by the company of the entire risk of longevity—involves nothing other than classic insurance concepts and procedures". Further, Mr. Justice Harlan could find "nothing in the history of the Securities Act of 1933 which savors in the slightest degree of a purpose to depart from or dilute this traditional federal 'hands off' policy respecting insurance regulation" (*id.* at 97). He found in the variable annuity "an experiment designed to accommodate annuity insurance coverage to contingencies of the present day economic climate" (*id.* at 100), and he pointed out that the Court had "agreed that we should not 'freeze' the concept of insurance" as it

existed in 1933 and 1940 (*id.* at 101). By the same token, said Mr. Justice Harlan, "we should not proceed on the assumption that the thrust of state regulation is frozen. As the insurance business develops new concepts, the States adjust and develop their controls. This is in the tradition of state regulation and federal absention" (*ibid.*).

Mr. Justice Brennan (concurring), speaking also for Mr. Justice Stewart, described in detail his view that the factor of investment risk was determinative. He pointed out that the purpose of the federal regulatory scheme had only minimal relevance to conventional insurance and annuity policies, which assumed the investment risk by creating fixed monetary obligations, and that state regulation of reserves and solvency offered meaningful protection to the policyholder. He reasoned that since the variable annuity did *not* include substantial fixed dollar guarantees federal regulation was *relevant* while state regulation was not. Mr. Justice Brennan, therefore, held the variable annuity contract to be a "security" subject to the 1933 and 1940 Acts.

All members of the Court warned against the freezing or petrifying of the concept of the annuity into a single pattern, and urged that development and growth of insurance concepts should be allowed. The majority and concurring Justices were of the view that to escape the imposition of the dual federal controls embodied in the securities laws upon state controls, an insurance company must meet a minimal test—it must bear "some" part of the investment risk associated with the contract. The issuer of the variable annuity—like the investment company—assumes no part of that investment risk; that risk remains *in toto* upon the annuitant. It was petitioner which urged the Court in *VALIC* to establish this minimal test for federal purposes.

In *VALIC* petitioner urged [41] with regard to the variable annuity companies:

> At no time under any of the contracts issued by the respondents is **any portion of the purchaser's risk of investment loss** borne by the respondents (Finding of Fact 49, R. 108). Respondents assume **only** the risk that the purchaser will survive his estimated mortality, in which event he will be entitled to be supplied with the value of additional annuity units.

And further petitioner urged [42] in *VALIC* in the court below:

> In assuming the risk of loss, the true insurance policy provides for at least **a minimum payment of a fixed sum.**

The reason for the petitioner's urging in *VALIC* of a test in minimal terms for federal purposes, we submit, resulted from petitioner's recognition that annuities are subject to comprehensive state regulation, and also that an insurance company's products are subject to intense competition in the market place from the products of other insurance companies. The Court, apparently, in *VALIC*, was aware that state regulation, as well as the factor of the salability [43] of annuity contracts, are factors with essen-

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41. Brief for Petitioner, p. 8. It will be noted that "investment risk" refers to the "**purchaser's risk** of investment loss". The court below correctly pointed out that petitioner now misconceives the concept (R. I 113).

42. Brief for the Securities and Exchange Commission, Appellant (United States Court of Appeals for the District of Columbia Circuit) p. 33.

43. Compare 359 U. S. at 90 where Mr. Justice Brennan commented on a hypothetical form of a "participating" annuity where the fixed guarantee of the traditional life annuity would be reduced "to the point of **insignificance**," and the rest of the return to the contract holder would be "variable." He said the "comparison of the premium cost of such a contract to its fixed return might well make it unsalable to the public."

tially control the level of benefits in annuity policies and the fairness of their provisions, matters exclusively for the states after federal minimal requirements have been met. The moment an insurance company promises some guaranteed dollar amounts of income, or some fraction of benefits in guaranteed dollar amounts, the company assumes an insurance risk in the federal sense. *Helvering v. Le Gierse,* 312 U. S. 531 (1941).

2. Petitioner Concedes That *VALIC* Established a Minimal Test, and That the Respondent Has Met That Test of "Some" Investment Risk-Taking.

Petitioner concedes (Brief, p. 15)[44] that the *VALIC* test involves "some" investment risk taking on the part of the company. Petitioner also asserts (Brief, p. 12) that by guaranteeing the principal sum during the deferred period (lifetime income available therefrom after maturity date is also guaranteed), the respondent:

> * * * undoubtedly assumes some risk * * *

Petitioner thus concedes, we submit, that the respondent meets the *VALIC* test.

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44. Petitioner took the same view on certiorari, Reply Brief for the Securities and Exchange Commission, p. 2:

> * * * The decision in *VALIC* rested on the narrow ground that since "the concept of 'insurance' involves some investment risk-taking on the part of the company," an arrangement which "places all the investment risks on the annuitant, none on the company" (359 U. S. at 71) was not insurance. * * *

3. The Court Below Found That the Respondent Assumes "Some" Investment Risk.

The court below found that the respondent had assumed the "major part" of the investment risk associated with the FFA over the duration of the contract (R. II. 114). We do not believe the court below had to go that far. The court further held (R. I 114-15):

> • • • The obligations of United under the FFA, unlike those of the variable annuity, are stated **in large part,** in terms of **guaranteed** dollar amounts; there is a substantial and meaningful **"floor"** to the FFA policy. • • •

The amount of the fixed (guaranteed) minimum cash value is stated in terms of *guaranteed* dollar amounts. The amount of the fixed (minimum) death benefit (the sum of the premiums paid) is stated in terms of *guaranteed* dollar amounts. The fixed (minimum) amount of monthly income for the life of the annuitant is stated in terms of *guaranteed* dollar amounts. The court below correctly found, in substance, that respondent assumes in the FFA *some* investment risk taking. Therefore, the FFA is an "insurance" product within the meaning of the Court's *VALIC* decision.

B. Under the more onerous test utilized by the court of appeals the FFA is an insurance product. The respondent bears a "substantial part" of the investment risk associated with the contract.

1. The Decision of the Court of Appeals.

The language of the Court in *VALIC* means, we submit, that for an insurance company to qualify its products as "insurance" in the federal sense, the company must bear

some portion of the investment risk associated with the contract. The court of appeals, however, read *VALIC* as requiring an insurance company to bear more than some portion of the investment risk associated with an annuity contract; it must bear a substantial risk:

> * * * In sum, both the majority and concurring opinions implicitly held that a company must bear a **substantial part** of the **investment risk** associated with the contract, as well as the mortality and expense risks, in order to qualify its products as "insurance". (R. I 112)

Under this more onerous standard derived from *VALIC* the FFA, also, as the court below correctly held, is an insurance product.

2. The Respondent Bears a Substantial Investment Risk in the FFA.

(a) *Petitioner concedes that the respondent bears substantial risks.*

Petitioner does not dispute that the respondent bears substantial mortality and expense risks in the FFA. As shown above, petitioner concedes also that the respondent bears some investment risk in the FFA. Further as we read its Brief (p. 13) petitioner does not seriously dispute that the investment risk undertaken by the respondent in the FFA is substantial. Petitioner therefore seeks to cast the issue in terms other than the substantiality of the investment risk assumed (*Ibid.*).

(b) *"Investment-risk" under VALIC denotes risk upon the annuitant (not upon respondent) of "losing money".*

The term "investment risk" as used in *VALIC* denotes risk on the annuitant (not on the respondent) of losing money. The district court in *VALIC* had found, as noted above, that the risk of profit or loss on investment is borne by the contractholders. It was argued in *VALIC* that the variable annuity companies did not assume any part of such risk.

In the FFA the annuitant transfers to the respondent all of the mortality risk, all of the expense risk, and the major portion of the investment risk over the entire duration of the contract. The court below held that petitioner misconstrued the concept of investment risk used in *VALIC* by focusing only upon the likelihood of the respondent's having to dip into surplus for reserves under the FFA in connection with the fixed (guaranteed minimum) value at termination or maturity. The court below pointed out (R. I 113-114):

> * * * Presumably no insurance company will undertake a guarantee in any policy if there is a substantial possibility that it will have to resort to **surplus** to satisfy that obligation. Instead of denoting the company's risk, we think the concept refers to the **annuitant's** risk of losing money—**principal**, as well as anticipated earnings on principal—over the course of the investment period. By guaranteeing **principal**—100 per cent of net premiums—United has assumed a **substantial part** of this risk during the **deferred** period of the contract. Were the annuitant to invest on his own in the stock market, or even in so-called "safe" securities

like bonds and mortgages, he would never have this guarantee and his principal would never be absolutely secure.

The Court pointed out in *VALIC* that a variable annuity lacks the "one earmark of insurance" which is the "true underwriting of risks", 359 U. S. at 73. In the FFA the respondent underwrites all the risks: (a) it underwrites the mortality risk; (b) it underwrites the expense risk; (c) it underwrites the investment risk, except that the investment risk during the deferred period is underwritten as to the principal sum and as to the terms of the formula for accumulation of net premiums.

The table of the amounts of monthly income which are available after maturity in the FFA is based upon actuarial predictions of life expectancy. The annuitant transfers from himself to the respondent the risk of "living too long."[45] The respondent assumes the risk of preserving capital and producing yield and of liquidating the amounts on an actuarial basis over the lifetime of the annuitant.

As the court below pointed out, the annuitant transfers to the respondent the risk of "losing principal" during the deferred period. This is a true underwriting of risk by any standard. "Were the annuitant to invest on his own in the stock market, or even in so-called 'safe' securities * * *, he would not have this guarantee, and his principal would never be absolutely secure" (R. I 114). The court below was obviously correct in pointing out, that the respondent by guaranteeing 100 per cent of the sum of net premiums has assumed a substantial part of the investment risk, during the deferred period of the contract (R. I

45. In *VALIC* the Court held that the mortality risk assumed by the variable annuity companies was "apparent, not real; superficial, not substantial" (359 U. S. at 71). In the FFA the fixed values make the mortality risk assumed by the respondent "**real * * * and substantial.**"

113). It is a guarantee that is totally absent in the investment company share or the variable annuity contract.

Petitioner errs when it frames the test of underwriting of investment risk in terms of whether the respondent's expense allowances will prove sufficient over the years to support the guaranteed values—that is, whether the respondent itself will lose money on the line of business. Respondent has predicated the FFA upon certain judgments—one such judgment was predicated upon the effect of certain assumed market actions over the years to come. However, the actual investment experience of the respondent may prove to be completely different from the assumptions made. Thus, the respondent bears the risk of adverse investment experience which may be at variance with the respondent's assumptions: petitioner itself has expressed herein the view that the movement of the stock market over a long period of years is an "unpredictable event"[46], and petitioner should therefore be the first so to concede.

Petitioner makes a rather surprising argument—that the respondent assumes no substantial investment risk—based upon some work sheets of respondent concerning the worst declines in one popular stock market average for the period 1933-1960; the analysis, however, omitted the period 1929-1932—historically the *worst* period of decline.[47] It is

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46. Brief for Appellant (United States Court of Appeals for the District of Columbia Circuit), p. 48. This is also the conclusion of E. F. Fama, Random Walks in Stock Market Prices, Financial Analysts Journal, Sept.-Oct., 1965, pp. 55-59. Petitioner's very "Statement of Policy" (PX 15; R. II 93) with regard to advertising sales literature of investment companies warns that representations may be improper which are based upon the contention that past prices of securities are a basis for asserting what their prices will be in the *future* (PX 15, ¶¶ (a)(2), (b)(1), (c), (e), (f), (g)(2) and (j); R. II 94-96).

47. PX 17; R. II 119. Petitioner did not call as witness any of the respondent's personnel who made the studies to explain their nature or purpose or to evaluate their results.

interesting to note that an attempt by others to set up a so-called "guaranteed mutual fund",[48] where the investor's principal would be guaranteed by a casualty company, was abandoned because a similar study of the period 1918-1938 showed such high losses that it would require too high a

48. In D. Thornsjo, the Variable Dollar Frontier Revisited, Best's Life News (July 1966) [cited in the Petition p. 14] it is pointed out (p. 18):

> As far back as June of 1961 at least one American insurance man began efforts to offer a package that would guarantee an investor against loss provided the investor followed dollar cost averaging in a particular mutual fund over a 10-year period. Extensive research was carried out through a casualty company. Of particular note was a study completed by the actuarial firm of Joseph Froggatt & Co. of New York. Froggatt & Co. began their studies of the market in 1929 and carried them through 1961. In this time period the investor whose [*sic*] dollar cost averaged his investments on a monthly basis in the Dow Jones Average, would have obtained a profit in every 10-year period. Armed with these statistics and a rate developed by Froggatt & Co., the casualty company drew a surety bond guaranteeing the principal of such an investor and had same accepted by the Minnesota Insurance Division. The casualty company then proceeded to assemble a guaranteed mutual fund package with a large and nationally known mutual fund organization. Simply stated, it was intended that through the casualty company the purchaser of a 10-year contractual mutual fund program would be offered a policy guaranteeing that at the end of the specified period the purchaser could redeem his contract for the then net asset value of his fund shares, or could claim under the surety bond by assigning said shares, in which event the investor received the cumulative amount of his monthly investments.
>
> Approval of a state insurance department was but one step toward the various administrative filings which are required for a new variable dollar product. The staff of the SEC questioned the validity of the rate and the amount of capital and surplus in the casualty company, taking the position all the while that the integrated nature of the policy and contractual plan required both to be collectively registered as a separate security. Accordingly, late in 1962, the casualty company requested another actuarial study, this time starting in 1918 and extending through 1938. The results of this study contributed in a major way to the subsequent decision to abandon the attempt to offer to guar-

premium. Petitioner is aware of this attempt, and its characterization of the risk taken by the respondent as "unsubstantial" is less than frank.

(c) *The court below correctly held the respondent's assumption of investment risk to be substantial.*

Petitioner erroneously insists that the FFA contract must be fragmented, and the investment risk during the deferred period only should be considered, a concept which the court below rejected. The court below held that petitioner's guarantee of principal and 2½ per cent interest thereon during the income-payment period is a substantial assumption of investment risk, which should not be ignored; the *VALIC* opinions, as well as common sense, indicate that a challenged policy should be viewed as a whole in order to test its amenability to federal regulation. The court below concluded that the respondent has assumed:

> * * * not only a **substantial part**, but by far the **major part**, of the investment risk over the duration of the entire policy * * * (R. I 114).

Respondent guarantees that the fixed (guaranteed minimum) cash value of the FFA during the deferred period shall (after the 10th year) never be less than 100 per cent of the sum of the net premiums—that the annuitant shall never receive less than a monthly income for his life which

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antee dollar cost averaging investments. The 1918 to 1938 study showed losses occurring in four 10-year periods, 1922-1931, 1923-1932, 1924-1933, 1925-1934. In all periods studied, a $100 per month contractual program was utilized with the Dow Jones 30 Stock Index as the assumed investment media. The ending value of a $12,000 total investment in the 1922-1931 period was $8,033.26; the 1923-1932 period was $5,944.68; the 1924-1933 ending value was $10,104.23; the 1925-1934 period was $10,400.90. In view of the very high premium which would have to be charged to cover such losses, it seemed best to abandon the "magic" of a guaranteed mutual fund.

will be provided by that fixed (guaranteed minimum) cash value—and that upon the death of the annuitant during the deferred period his beneficiary will receive a death benefit equal to the sum of the premiums which have been paid. These guaranteed dollar amounts are, in the language of the Court in *VALIC* and as found by the court below, a substantial and meaningful *"floor."*

(d) *The respondent, in a practical sense, has underwritten the investment risk of producing yield during the deferred period.*

The court below held (R. I 114) that the substantiality of the investment risk which the respondent assumes in the FFA is even more apparent when the FFA is compared with a conventional participating policy. In such a policy the interest factor during the deferred period is deliberately set quite low so as to assure dividends. While dividends are in theory discretionary, in practical terms, they must be declared regularly or the company will lose too much business. The court below pointed out that, in effect, a participating policy promises an opportunity to benefit by greater interest when that is earned (R. I 114, note 11). The FFA extends this principle. The FFA guarantees a 0 interest rate in return for an opportunity to benefit even more fully by excess interest when that is earned. It is for this reason, said the court below, that the FFA "can be regarded as an extension or development of the concept of participating insurance (R. I 114-115, note 11).[49] The

49. The FFA differs from the conventional participating annuity (and in favor of the annuitant) not only with respect to the annuitant's opportunity for greater benefit by greater interest when that is earned, but in its automatic feature. The FFA contract stipulates that the accumulated cash value of the FFA will automatically reflect all the favorable investment results—less an annual deduction of 1 per cent for the actuarial margin and less a reserve for the respondent's possible federal income (capital gains) taxes.

respondent not only assumes, in the strict sense, "a substantial part, but by far the major part of the investment risk over the duration of the entire policy" (R. I 114), and not only assumes all of the investment risk during the income-payment period—but, in practical terms assumes a substantial investment risk during the deferred period too. If the respondent does not achieve and, (as contractually stipulated) pass on to the FFA contractholder in the form of a higher level of monthly payments after maturity, an average net investment rate in excess of 2½ percent per annum (the accumulation factor guaranteed in the respondent's conventional deferred annuity) or the rates achieved or guaranteed by the annuities issued by competitive insurance companies—then the FFA contract will certainly not prove to be a successful line of business.

(e) *Petitioner has admitted, in effect, that the respondent has assumed a substantial investment risk over the entire duration of the FFA.*

Throughout this litigation petitioner has remained silent on the subject of the quantum of investment risk which an insurance company must assume in a deferred annuity before petitioner administratively will adopt a "hands off" policy for that company's annuities. Petitioner has, however, indirectly admitted the substantiality of the investment risk assumed by the respondent. Petitioner has conceded that the respondent's conventional deferred annuity (in which the accumulation factor during both periods is a guaranteed interest rate of 2½ percent per annum) is *not* a security. The conventional deferred annuity issued by respondent has a cash value at the end of the 10th policy year of $11,561.08; it will provide from that yearly a monthly income of $47.28 for the life of the annuitant. In the 20th year of the cash value of the con-

ventional annuity would be $26,895.08, and the monthly income $134.74.

Petitioner thus concedes that in making these promises in the conventional annuity of guaranteed cash value and lifetime income, the respondent assumes a substantial investment risk.

Can petitioner rationally dispute the fact that the FFA—which in the 10th year has a cash value of $10,374.00 and which will produce a monthly income of $42.43 for life, and which has a cash value in the 20th year of $21,774.00 and which will produce a monthly income of $109.09 also imposes a substantial investment risk upon the respondent? The FFA will thus pay in the 10th year—as a minimum—a monthly income for life which is 90 per cent of that which will be paid by the respondent's conventional annuity; and in the 20th year—as a minimum—an income which is 81 per cent of that which will be paid by the respondent's conventional annuity.

II. As Held in *VALIC* Congress Did Not Intend to Freeze the Concept of the Annuity in Its 1933 Mold.

A. The exemption provisions and their legislative history.

The 1933 Act in Section 3(a)(8) specifically exempts from its coverage any insurance policy, any endowment policy, any annuity contract, or any optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner of any state.[50] The 1940 Act specifically exempts any insurance company, which is defined as a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks under-

50. By November, 1962 the FFA contract had been approved for issuance by the Nebraska Director of insurance and by the insurance commissioners of 16 other states (R. I 35-36).

written by insurance companies, and which is subject to supervision by the insurance commissioner of a state.[51]

Congress made unmistakably certain that Section 3(a)(8) should not be viewed as an ordinary "exemption", but was inserted in the bill to make clear "* * * what is already implied in the act, namely, that insurance policies are not to be regarded as securities subject to the provisions of the act. * * *" Congress was of the view that the "entire tenor of the act would lead, even without this specific exemption, to the exclusion of insurance policies from the provisions of the act, but the specific exemption is included to make misinterpretation impossible."[52]

In 1944, after the Court removed the supposed Constitutional basis for exemption of insurance by holding that the business of insurance was subject to federal regulation under the commerce power, *United States v. South-Eastern Underwriters Ass'n.*, 322 U. S. 533, congress forthwith enacted the McCarran Act, "broadly to give support to the existing and future state systems for regulating and taxing the business of insurance," *Prudential Insurance Co. v. Benjamin*, 328 U. S. at 429, and "to assure that existing state power to regulate insurance would continue," *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U. S. at 319. As Mr. Justice Harlan (dissenting) pointed out in *VALIC*,

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51. The respondent is subject to the supervision of the Nebraska Director of Insurance, the insurance commissioner of the District of Columbia and of 48 other states (R. II 54).

52. H. R. Rep., No. 85, 73rd Cong., 1st Sess. 15 (1933). At the time of the quoted report the House Bill did not contain the words "annuity contract or optional annuity contract," other than by implication in the reference "and like contracts." Simultaneously the Senate was considering S. 875 which specifically mentioned annuity contracts, but did not refer to insurance. The present language, reaching both, was inserted in conference. H. R. 152, 73rd Cong., 1st Sess. (1933). The exemption of insurance reflected not merely adherence to tradition, but also compliance with a supposed command of the Constitution. (Harlan, J., dissenting, 359 U. S. at 97.)

after reviewing the foregoing developments which followed the South-Eastern decision, that decision "rather than encouraging Congress to enter the field of insurance • • • spurred reiteration of its undeviating policy of abstention" 359 U. S. at 99.

Congress did not proceed in enacting the 1933 and 1940 Acts on the assumption that the thrust of the state regulation is frozen, or that the concept of insurance or annuities is frozen. As Mr. Justice Harlan (dissenting) said in *VALIC* "As the insurance business develops new concepts the states adjust and develop their controls," 359 U. S. at 101. As we show below, congress was well aware of state regulation of the participating annuity. The FFA is an extension of the concept of the participating annuity. Congress was also well aware in 1933 of the concept of the deferred (or optional) annuity in which the annuitant has the right to terminate the contract on or before maturity and to receive the surrender value thereof. Congress specifically exempted this type of annuity.

State regulation encompasses the use by insurance companies of separate accounts, and every detail of the FFA and of the respondent's business related to FFA is under the watchful eyes of the Director of Insurance of Nebraska and of the similar officials of the other states where the FFA contract has been approved, and of the National Association of Insurance Commissioners.

B. Congress specifically exempted the deferred (optional) annuity contract.

The FFA is an optional annuity contract, that is, a type of deferred annuity contract. The deferred annuity contract has taken the following forms:[53]

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53. Maclean, Life Insurance (4th ed., 1935) 59-67.

(i) *Annuity without return.*

This is the most elementary form of the deferred annuity. The annuitant pays premiums up to a designated age and upon attainment of that age the insurer undertakes to pay the retirement income. There are no cash values or death benefits, and in the event of the death of the annuitant during the deferred period or the income-payment period the contract terminates and no payments are required to be made by the insurer.

(ii) *Annuity with cash refund.*

This is the next most elementary form of the deferred annuity. This contract is similar to the annuity without return except that in the event of the death of the annuitant during the income-payment period, the beneficiary is paid the total of all premiums less the income payments which have been made to the annuitant, without interest. There are no cash values.

(iii) *Annuity with refund.*

This is similar also to the annuity without return except that in the event of the death of the annuitant income payments are continued to the beneficiary until the total income payments made equal the total premiums paid. There are no cash values.

Speaking in 1935, one scholar noted the unpopularity of the foregoing:

> The unpopularity of the regular deferred annuity as a means of provision for old age has led to the development of a special type of deferred annuity known * * * as * * * "retirement annuity".

* * *

> When the retirement age is reached the policyholder usually has the **option** of selecting either the total cash value at that time (**the cash option**) or an annuity. * * * [54]

As a consequence, the "retirement" or "optional" annuity evolved. Unlike the foregoing types, the retirement or optional annuity provides for cash values during the deferred period as the foregoing do not, and the annuitant is given the option to receive a cash value upon termination of the contract. Congress exempted not merely annuity contracts but "optional" [55] (i.e., deferred) annuity contracts. Congress made the choice. The optional (deferred) annuity—equally with the immediate annuity—is exempt from the federal securities laws. Therefore, petitioner's argument, based as it is entirely upon fragmentizing the contract and reaching for jurisdiction only over a portion thereof, is without any support in the very statutory provision relied upon. Petitioner's very argument is vitiated by the congressional exemption for the class of deferred (optional) annuities.

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54. *Id.* at 63-64.

55. In *VALIC* petitioner did not dispute the assertion made in respondent's brief (p. 22):

> * * * In the Securities Act of 1933, § 3(a)(8) refers to the "**optional annuity contract,**" which is merely another term for a **deferred annuity policy** containing the usual provision allowing an annuitant or a beneficiary to **elect** whether to take the **cash surrender value** instead of the **life annuity.** * * *

C. It was not congress' intention to have the exemption for deferred (optional) annuities depend upon the presence of an accumulation rate during the deferred period or upon the nature thereof.

Petitioner urges, as it did in the court below, that the "investment risk", referred to in the Court's *VALIC* decision means exclusively the risk of respondent's not earning interest on the amounts of net premiums received by the respondent. It is petitioner's contention that an annuity contract can not be an "insurance product" within the meaning of *VALIC* unless there is an accumulation factor during both the deferred and income payment periods, which factor is a guaranteed interest rate. In essence, as the court below observed, petitioner seeks to "freeze" annuity policies to their present conventional form (R. I. 113), and to allow no deviation therefrom. The FFA embodies an evolution of the deferred (optional) annuity conconcept. Its single essential deviation lies in the nature of the accumulation factor during the deferred period.

But any obligation of the insurer to improve net premiums during the deferred period by a guaranteed interest factor is a matter of *contract* not a requirement of law. There is no requirement under the law of any state that there be such an interest factor. In fact, historically, many annuities did not [56] contain such a promise of incre-

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56. E. W. Patterson, Legal Protection of Private Pension Expectations (1960), points out (p. 143):

> * * * The three principal objectives of regulatory legislation [of investments underlying annuities] appear to be those of any well-managed life insurance investment program; safety of principal, yield and liquidity. **Safety of principal is the most important** for the fulfillment of the expectations of the prospective annuitant because of the length of time over which the pay-in stage lasts and also the possible years of the pay-out stage * * * The second objective—yield—is scarcely less important because it adds to the principal and since **most (but not all)** annuity contracts, as well as life insurance contracts, are made with a "guaranteed" minimum yield for every dollar received. * * *

ment. There is, therefore, no basis for freezing the conventional annuity to the extent that there must be such a particular kind of guaranteed accumulation rate during the deferred period.

D. The participating annuity is concededly an insurance product. No intention can be imputed to congress to freeze the form of participation offered. The FFA is, in substance, an evolved form of the participating annuity.

One of the important functions of an insurance company is investment. The passing on to policyholders of favorable investment results [57] achieved by insurance companies has been commonplace for years. In *VALIC* petitioner conceded that annuities issued on a participating basis are not securities. The district court's finding of fact 28 in *VALIC* stated,[58] in part:

> * * * Under participating annuity policy contracts, the amount of the payments to the annuitant may vary due to the declaration by the insurance company of dividends to the annuitant arising from experience more favorable than anticipated with respect to mortality, **investment earnings** and expenses. Plaintiff SEC does not contend, neither has it shown, that it has ever instituted any legal or administrative action charging that annuity policies payable in fixed-dollar amounts issued on a participating basis are "securities" under the Securities Act of 1933, or that the insurance companies issuing such policies are "investment companies" under the Investment Company Act of 1940.

In *VALIC* petitioner had also argued to the Court that the

57. Participating insurance accounted for 64 per cent of all life insurance in force with United States companies at the end of 1965. Life Insurance Fact Book 1966, 21-22.

58. R. 100 in *VALIC*.

dividends on a participating policy may result from favorable investment return.[59]

In *VALIC* the contention was made by petitioner that when congress passed the federal securities laws the variable annuity was unknown—that therefore there was no intention to exempt such form of annuity. But all members of the Court in *VALIC* were of the opinion that there was no congressional intention to "freeze" the forms of insurance (and annuities) into the molds into which they fitted in 1933 and 1940. Congress was indisputably familiar in 1933 and 1940 with participating annuities. No intention may be imputed to congress to "freeze" the development of forms of any annuity contracts including deferred (optional) annuity contracts which offer a participation.

The FFA, while similar in concept in the deferred period to the participating annuity, differs in that in the participating annuity dividends are declared periodically[60] by the board of directors. The FFA guarantees to the annuitant that at the maturity date he will receive the life-

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59. Reply Brief for Petitioner, p. 4:

> It is true that a mutual insurance company or any traditional insurance company writing "participating policies" * * * may distribute dividends in the nature of a return of premium as a result of profitable operations and that these can come about by reason of a favorable investment return, as well as by reason of a favorable mortality experience or lower expenses than anticipated. A mutual policy holder or a holder of a traditional "participating policy," however, like other purchasers of true insurance, is assured of receiving the face amount named in his policy upon the occurrence of the hazard against which he is insured; this is his basic insurance protection. * * *

In the FFA the fixed (guaranteed minimum) values are in effect, the "face amount" named in the policy, that is, the annuitant's basic protection.

60. This is not the case in the FFA. This is one of the reasons why the FFA is technically labelled as "non-participating". In the FFA the respondent makes available to the annuitant automatically the benefit of the respondent's favorable investment experience achieved during the entire deferred period in its investments underlying the FFA.

time income, available not only from fixed[61] (guaranteed minimum) cash value but also from the excess, if any, of the accumulated value over the fixed value. Also, all benefits from any favorable investment experience of the respondent—undiluted by any possible losses resulting from an unfavorable expense and mortality experience—must be passed on to the FFA contractholder. If the respondent modified the FFA by providing that the respondent would at its option upon the maturity date allocate to the FFA some portion of the excess, if any, of the accumulated cash value over the fixed cash value—the contract would then be much less favorable to the annuitant. There would no longer be any obligation on the respondent *automatically* to apply the excess, as now provided. But under petitioner's contention this modification would bring the FFA closer to the conventional participating policy, which is admittedly exempt.

E. Petitioner's basic contention—if accepted—would freeze the annuity concept to its current conventional form.

The Court's decision herein will determine whether the concepts of the deferred (optional) annuity shall remain forever frozen—or whether an insurance company may (without invoking the full arsenal of the federal controls) include in such an annuity contract a method of accounting

61. As an annuity offers greater benefits the premium naturally increases. Thus, the annuity which includes a cash value and a death benefit carries a higher premium than annuities which do not offer such benefits. Conversely, in a participating annuity the amount of the guaranteed income is definitely lower than it would be on a non-participating basis. The FFA contract—as an extension of the principle of participation—does (as should be expected) have lower guaranteed benefits than the conventional annuity, but offers the opportunity to benefit from a greater participation.

for investment results which differs from that heretofore utilized by insurance companies.

There can be little doubt that petitioner contends for the necessity of a guaranteed interest rate in the annuity during the deferred period, in order to exempt it from federal regulation. Petitioner's position is that insurance companies *must* fund all annuities with only debt securities [62] in order to meet the federal test of exemption.

III. The Federal Controls Embodied in the 1933 and 1940 Acts Are Irrelevant to the Respondent and to the FFA and Could Add Nothing to the State Controls, Regulation and Examination Which Exist.

A. The Court held in *VALIC* that where there is some investment risk-taking on the part of the insurer the federal controls are essentially irrelevant.

In *VALIC* petitioner urged upon the Court the proposition that to fall within the insurance exemptions in the federal securities law an insurance company's products had to involve "some" investment risk taking on the part of the company. Petitioner, as well as the intervenor securities trade association, urged upon the Court the proposition that the variable annuity companies were quite similar to investment companies, that they made no guarantees, they merely acted as conduits and remained legally indifferent at all times to the value of their portfolios.

The thrust of the Court's decision in *VALIC* is that where there are some guaranteed fixed dollar benefits then federal controls become essentially irrelevant. It may be inferred from *VALIC* that the Court believed that a mini-

62. Petitioner asserts (Brief, p. 24) that:
* * * the guaranteed yield, and the fixed-return investment required to meet that guarantee, have been the traditional hallmarks of insurance. * * *

mal test was most relevant for applicability of the exemptions in federal law. As Justice Brennan pointed out in *VALIC*, since the variable annuities did not include any specific fixed dollar guarantees federal regulation was quite relevant to that contract. In other words, in the variable annuity the fortunes of the annuitant did turn on the success of the securities market and the investment policy employed. In the FFA there are substantial fixed dollar guarantees, and not the fortunes but merely the possibility of excess benefits resulting from a participating feature is at stake.

B. Petitioner is seeking, in effect, to divest the respondent of control over its investments underlying the FFA contracts.

The very essence [63] of what petitioner is seeking to accomplish in this suit is the transfer of control of respondent's investment policy from respondent itself to FFA contractholders.

It is true that the FFA contractholders, had the courts below granted the relief prayed for by petitioner, indisputably could have appointed forthwith a rival insurance company as their "investment adviser" to control the respondent's investments. Petitioner's contention that the investment policy to be applied to the funds underlying the FFA contracts should be in the hands of others than the respondent is a bit startling. It is respondent alone which undertakes contractual obligations in the FFA to pay substantial guaranteed dollar amounts. It is respondent alone, of course, which must have full control of its investment policy in fulfilling these obligations. At all times the re-

63. In the court below petitioner observed that the provisions of the 1940 Act dealing with the investment advisers contract and investment policy are "in large part **the very essence** of the 1940 Act." Brief for Appellant, p. 31.

spondent carries on its investment activities obligated to respond to the fixed values of the FFA, as well as obligated—in a practical sense—to produce excess values under the contract. Petitioner's argument would appear to be that there should be federal control of that portion of the investment policy which relates only to the production of excess values. But it seems self-evident that one could hardly divide the respondent's investment decisions and policy into two parts, one part relevant to fixed values and another part relevant to excess values—one controlled by the states and the other controlled by the federal government.

C. Petitioner is seeking, under the guise of irrelevant federal regulation, to become the final arbiter of purely insurance matters which should be solely in the hands of the state commissioners.

In *VALIC* Mr. Justice Brennan posed the question as to what would be the subject matter of federal regulation in the case of an annuity. That question remains a vital and significant one in relation to the FFA and to respondent. Petitioner is attempting to intrude upon the historic and exclusive province of state insurance commissioners. Petitioner seeks to set itself up as the final arbiter, in determining whether an insurance company falls within the exemption provisions of the securities laws, of the following:

(a) whether an annuity must have any kind of accumulation factor during the deferred period;

(b) the precise level of that accumulation factor;

(c) the nature of the participation offered by any participating policy;

(d) the level of participation benefits offered;

(e) the level of premiums for fixed benefits offered in an annuity.

All of the foregoing considerations are matters peculiarly within the competence of the state commissioners. It is inconceivable that the test of whether the federal securities laws apply to an annuity should be made to depend upon one or more of the foregoing factors.

While petitioner has never been given authority to pass on the merits of a particular security, insurance commissioners for years have been involved in controlling the fairness of insurance contracts—including life annuity contracts. If the FFA contractholder desired to obtain the exact fixed monthly income for his life which is provided for by the respondent's conventional annuity he would merely *increase* the amount of his premium for the FFA. Thus, the fact is clear that petitioner seeks authority over the premium level of the FFA policy.

Truly, petitioner is seeking jurisdiction over the respondent and the FFA contracts (during the deferred period) in order to control all of the defendant's insurance operations with regard to the FFA policies. However, we submit, it is not petitioner's function to pass judgment upon either the level of the fixed (guaranteed) minimum values of the FFA, or the level of the possible terminal dividend. It is not the petitioner's function to prognosticate what the accumulated cash values of the FFA will be after many years, or to evaluate either the potential liberality or niggardliness of the terminal dividend, if any, which may be produced by the empiric accumulation factor. These are all matters solely for the judgment of state regulators.

D. Respondent—not the FFA contractholder—is the investor. The FFA contractholder is an annuitant.

The FFA contractholder does not expect that the control of the investments underlying the contract will be turned over to him, for an important aspect of the FFA

to him is the responsibility placed upon respondent to carry on the investment function—just as it does in connection with any other group of contracts.

The concept of profit or gain while meaningful in the case of the owner of a security, has little relevance to the annuitant. He does not know how long he will live after the maturity date, and he has no reasoned basis for expecting "gain". If the FFA did not provide for a cash surrender value, then it would be even clearer that the concept of "gain" is irrelevant to the annuitant since any accumulated cash value in excess of the fixed value would not be available to the annuitant in a lump sum at any time, but would only reflect itself in a higher level of lifetime income. Could it then be said that the annuitant was an "investor" in the stock market?

Petitioner seeks to make an analogy between shares of an investment company and the FFA. But no analogy exists. In an investment company the shareholder acquires an equity interest in the assets of the corporation—these assets consist mainly of securities issued by other corporations. The shareholder may, therefore, be quite accurately described as the owner of a *pro rata* share of a portfolio of securities. The investment company stands at all times legally indifferent to the value of the portfolio, and the value of the investor's share depends directly upon the values of the portfolio of securities. The net asset value of such shares is computed twice daily because it is the intention and expectation of the investor to redeem his shares and his decision as to when to redeem will be predicated upon the then value.

In the FFA the respondent does not stand legally indifferent to the values of the investments underlying the FFA. The respondent's investment activities related to the

FFA are carried on in light of its contractual obligations. The values of the investments underlying the FFA determine the excess cash value of the FFA; however, the existence of such excess value and the precise amount thereof is communicated to the annuitant once a year (PX 2, § 11; R. II 3) for informational purposes, as is done with the conventional participating annuity; and not with any intent that the annuitant terminate the contract.

Petitioner did not call any FFA contractholder to testify as to his motivation in acquiring the FFA.[64] Petitioner therefore departs from the record when it makes an argument based directly on the supposed motivations of FFA contractholders (Brief, p. 25). If the record shows anything, it shows that FFA contractholders have every right to believe that they have—over the entire duration of the contract—a contract which guarantees significant fixed benefits and which offers the opportunity for excess benefits.[65]

E. State and federal regulation have different purposes and objectives.

All aspects of the FFA are under state[66] control. Federal controls could only duplicate effective existing state

64. Petitioner assumed this burden in *VALIC* by calling two holders of variable annuities; it decided not to call 8 other policyholders whom it had under subpoena (*VALIC*, R. 375).

65. Petitioner makes reference to certain promotional materials which the respondent used to introduce the FFA in 1962. No such brochure is required under Nebraska law. The FFA can be written without such materials, and the content of any such materials is subject to change or modification. The Nebraska Director of Insurance approved the brochure under his broad statutory powers to prevent misleading advertising. R. R. S. 1943, § 44-1501 *et seq.*

66. Respondent's Answer and the affidavit of N. Murray Longworth (see note 5 above) assert that up to the end of 1963 the FFA had received the approval of the insurance commissioners of 17 states.

control of matters foreign to the expertise of federal regulators. In petitioner's contention the FFA embodies not one but two securities. Petitioner would seek to regulate all aspects of the respondent's operations, particularly its operations which relate to the guaranteed values of the FFA—that, in essence, constitutes *all* of the respondent's operations, since all of the respondent's assets back up its contractual obligations.

Petitioner itself recognizes the different objectives, administration and impact on the public, between the federal regulation of investment companies and the state regulation of insurance companies. Significantly, petitioner also recognizes that it has neither the qualifications [67] nor the personnel,[68] to be involved in insurance regulation.

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67. In Prudential Insurance Company of America, Investment Company Act Release No. 3620, CCH Fed. Sec. L. Rep., ¶ 76,891 (1961-64 Decisions), at p. 81,288 (1963), petitioner said it has "not the qualification, * * * to become involved in matters of insurance regulation."

68. A. F. Conwill [then Director, Division of Corporate Regulation, SEC], Recent Developments Affecting Federal Regulation of Variable Annuity Issuers, The Weekly Underwriter, Feb. 16, 1963, p. 32, points out the limited personnel involved in federal regulation of investment companies:

> May I carry this thought further with an administrative fact of life within the Commission. It may surprise some to learn that the total personnel in my Division devoted to Investment Company Act matters approximates the total number of state insurance commissioners. I mean actual commissioners and not their deputies and subordinates. And when I refer to my personnel I mean the total, including stenographers and clerks. We have no plans for a substantial staff expansion. In fact, for the next fiscal year our budget, if accepted by Congress, will add only three persons to my staff in this area.
>
> The variable annuity problem alone demonstrates the nature of the difficult legal and practical problems with which we are repeatedly confronted. Furthermore, we have 722 registered investment companies for whose regulation we are responsible and whose papers we must process. We must direct an inspection program for these companies.

In view of these circumstances, it is strange to see this administrative agency reaching out for jurisdiction over matters totally foreign to it.

In the case of an annuity a relationship is entered into with the company which may last for 75 years or longer. State regulation of insurance is directed toward such a continuity of relationship and is based upon control of premiums under the contract, the investment policy employed, the existence and size of reserves and the very solvency of the company. This regulation is exercised through detailed and continued examination during the entire duration of the contract. Contrast the petitioner's type of regulation, which is primarily based upon disclosure. It was only in recent years that petitioner undertook the examination of the affairs of the investment companies registered with it and then only a fraction of the companies.[69]

We do not here have a scheme the purpose of which is the realizing of quick profits for promoters, where such scheme should be placed under federal regulation for the protection of the investors. The respondent is fully regulated in every detail of its operation by the various insurance commissioners, and must comply with the laws, administrative regulations and rulings of the states in which

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We have rules to draft and problem areas to study with a view to determining the necessity for future legislation. I say this not in a bureaucratic effort to gain sympathy, but only to inquire—under these circumstances how much insurance regulation could we effectively accomplish even in a single state?

69. In 1957 petitioner initiated a program for the periodic inspection of investment companies pursuant to the statutory authority conferred under Section 31(b) of the 1940 Act. Under this program 52 companies (out of 727 registered under the Act) were inspected in 1962—the year the present suit was commenced. In all prior years only 113 inspections had been made. 28th Annual Report of the Securities and Exchange Commission Fiscal Year Ended June 30, 1962, p. 109.

it does business. It may be noted that no industry, other than the public utility industry, is as well regulated and completely regulated as the insurance industry. *American Hospital and Life Insurance Co. v. Federal Trade Commission*, 5 Cir. 1957, 243 F. 2d 719, aff'd 357 U. S. 560 (1958).

IV. Issuers of Variable Annuities or Investment Company Shares—Unlike the Respondent—Guarantee Nothing Except an Interest in a Portfolio of Common Stocks or Other Equities.

Petitioner persists in this Court in urging two notions which are patently without merit. First, it urges that the respondent's guarantee of the principal sum underlying the FFA contract is "largely without hazard"[70] (Brief, p. 38). Second, it urges that the FFA contractholder is like the investor in *VALIC* or the mutual fund shareholder (Brief, p. 30). The record herein—as well as common sense—completely belies this alleged "likeness".

The holder of a variable annuity or an investment company shareholder is at all times at the mercy of values based directly on the market action of a portfolio of securities—his "fortunes" depend on market action. The issuer of the variable annuity and the investment company too, are legally indifferent to the value of the securities in

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70. Compare the view expressed in *VALIC* in this Court by one of the *amici* herein. The Brief for National Association of Securities Dealers Inc. asserted (p. 24)

> The "variable annuitant" always bears the risk of loss. The respondents do not take any part of that risk: like managers of investment companies, they are without legal responsibility to the "variable annuitants" for any investment, reasonably prudent when made, that happens suddenly to go bad. They cannot be held accountable for any losses to "variable annuitants" that stem from sudden drops in equity values caused by war, deflation, executive heart attacks, or any of a thousand other unforseeable events that affect security values.

the portfolio; they are mere conduits. The respondent, by contrast, undertakes significant and subsisting obligations in the FFA policy, obligations which are legally fixed at the moment of issuance of the policy. There is a true underwriting of risks.[71]

The essential nature of the FFA contract is highlighted by the example of a male, age 35, who pays $100 a month for 10 years in connection with: (a) a variable annuity, as in *VALIC*, (b) investment company shares, and (c) the respondent's FFA:

(a) If he purchases the variable annuity, at the end of the deferred period the guaranteed cash value of the variable annuity will be 0; the contractually guaranteed death benefit will be 0; and during the income-payment period the amount of guaranteed fixed dollar monthly installments will be 0.

(b) If he purchases shares of an investment company to be held till age 45, at the end of the period the guaranteed

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71. The Brief for *Amici Curiae* In Support of Petitioner refers elaborately (pp. 15-17) to the affidavit of D. R. Gustafson, respondent's Actuary in 1963, which was submitted by the respondent in support of its motion for summary judgment. Petitioner has omitted relevant portions of the affidavit including those which state:

> The F.F.A. policy is an annuity policy. The F.F.A. policy involves the identical transfer of risks from the annuitant to the Company as is involved in the case of the Annual Premium Deferred Retirement Annuity policy [the conventional deferred annuity issued by the respondent] * * * The transfer of risks involved in these two types of annuity policies is similar to the transfer of risks from the policyholder to the Company which is involved in the case of whole life policies, as will be more fully shown below (p. 3).
>
> * * *
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> * * * The four basic elements of risk transfer are likewise present in the F.F.A. policy. The distinguishing feature of the F.F.A. policy—as compared with the [conventional annuity] policy—is that the transfer of investment risk to the Company takes a different form. * * * (p. 10).

cash value of the shares will be 0; the contractually stipulated death benefit will be 0; and after the 10th year the guaranteed fixed dollar monthly installments, computable from a contractually stipulated table, will be 0.

(c) If he acquires the FFA issued by the respondent, the guaranteed minimum cash value at the end of the deferred period will be $10,374.00; the guaranteed contractually stipulated minimum death benefit will be $12,000; and after the maturity date he will receive each month, as long as he shall live, at least the sum of $42.43.[72]

In the case of the FFA in addition to the *fixed* values noted in the example above, there is the possibility of *excess* values over the deferred period. But the annuitant's "fortunes" will not depend—nor does he acquire a contract that leads him to expect[73] them to depend—upon the existence or non-existence of such excess values. If they are realized, they will be in the nature of a participation, a dividend, or a bonus.

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72. In the example given with a maturity date at age 45, the life expectancy of the annuitant under the applicable table of mortality would be 28.8 years. Thus, the income-payment period would be 3 times as long as the deferred period.

73. In reality the respondent underwrites not merely the most important part of the investment risk during the deferred period (by guaranteeing the principal sum), but *all* of the investment risk provided for by the FFA contract terms. The annuitant's basic protection is premised upon the fixed values; the excess values are stated to be a possible bonus. The FFA stipulates that (PX 2; R. II 2):

> Prior to the Maturity Date the value of this policy **is not guaranteed other than as specifically provided herein**; * * *

The FFA also states (PX 2 § 6; R. II 3):

> Since accumulated values depend upon Accumulation Rates based on the investment experience of Flexible Fund A, such value at the end of any month **may be less than such value at the end of the previous month.**

We think it manifest that the possibility of such a participation over and above significant fixed values in a deferred (optional) annuity was not intended by congress to mark the occasion for the innovation of federal control.

CONCLUSION.

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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February, 1967.

SUPREME COURT OF THE UNITED STATES

No. 428.—October Term, 1966.

Securities and Exchange Commission, Petitioner, *v.* United Benefit Life Insurance Company.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[May 22, 1967.]

Mr. Justice Harlan delivered the opinion of the Court.

This action was initiated by the Securities and Exchange Commission to enjoin United from offering its "Flexible Fund Annuity" contract without meeting the registration requirements of § 5 of the Securities Act,[1] and to compel United to register the "Flexible Fund" itself as an "investment company" pursuant to § 8 of the Investment Company Act.[2]

The "Flexible Fund Annuity" is a deferred, or optional, annuity plan having characteristics somewhat similar to those of the variable annuities this Court held, in *S. E. C.* v. *Variable Annuity Life Insurance Co.*, 359 U. S. 65 (VALIC), to be subject to the Securities Act. Like the variable annuity, it is a recent effort to meet the challenge of inflation by allowing the purchaser to reap the benefits of a professional investment program while at the same time gaining the security of an insurance annuity.[3] There are, however, significant differences be-

[1] 15 U. S. C. § 77e.

[2] 15 U. S. C. § 80a–8.

[3] United's sales brochure describes the plan as featuring "a method of accumulation modernized to keep pace with today's living . . . and a chance to share in the growth of the country's economy." At the same time it is claimed that the plan "combines this new method of accumulation with the time-tested advantages of a lifetime annuity . . . a savings and accumulation plan that guarantees a lifetime income at maturity."

tween the "Flexible Fund" contract and the variable annuity, and it is claimed that these differences suffice to bring the "Flexible Fund" contract within the "optional annuity contract" exemption of § 3 (a) of the Securities Act [4] and to bring the "Flexible Fund" itself within the "insurance company" exemption of § 3 (c)(3) of the Investment Company Act.

The purchaser of a "Flexible Fund" annuity agrees to pay a fixed monthly premium for a number of years before a specified maturity date. That premium, less a deduction for expenses (the next premium), is placed in a "Flexible Fund" account which United maintains separately from its other funds, pursuant to Nebraska law. Neb. Rev. Stat. § 44–310.06. United undertakes to invest the "Flexible Fund" with the object of producing capital gains as well as an interest return, and the major part of the fund is invested in common stocks. The purchaser, at all times before maturity, is entitled to his proportionate share of the total fund and may withdraw all or part of this interest. The purchaser is also entitled to an alternative cash value measured by a percentage of his net premiums which gradually increases from 50% of that sum in the first year to 100% after 10 years. Other features common to conventional annuity contracts are also incorporated in United's plan.[5]

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[4] 15 U. S. C. § 77c (a)(8) exempts from the operation of the Securities Act "Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia."

[5] For example a refund of premiums is provided in case of death before maturity. Deferred periods of varying duration may be chosen, and the purchaser may elect to turn his cash value into an annuity at a date before specified maturity. Standard incontestability clauses and assignment clauses are incorporated into the contract. The contract at issue in *S. E. C.* v. *Variable Annuity Life*

At maturity, the purchaser may elect to receive the cash value of his policy, measured either by his interest in the fund or by the net premium guarantee, whichever is larger. He may also choose to convert his interest into a life annuity under conditions specified in the "Flexible Fund" contract. These conditions relate future benefits to dollars available at maturity so the dollar benefits to be received will vary with the cash value at maturity. However, the net premium guarantee is, because of this conversion system, also a guarantee that a certain amount of fixed-amount payment life annuity will be available at maturity.

After maturity the policyholder has no further interest in the "Flexible Fund." He has either received the value of his interest in cash, or converted to a fixed-payment annuity in which case his interest has been transferred from the "Flexible Fund" to the general reserves of the company, and mingled, on equal terms per dollar of cash value, with the interests of holders of conventional deferred annuities.

Because of the termination of interest in the "Flexible Fund" at maturity, the SEC contended that the portion of the "Flexible Fund" contract which dealt with the pre-maturity period was separable and a "security," within the meaning of the Securities Act. It was agreed that the provisions dealing with the operation of the fixed-payment annuity were purely conventional insurance provisions, and thus beyond the purview of the SEC. The District Court held that the guarantee of a fixed-payment annuity of a substantial amount gave the entire contract the character of insurance. The Court of Appeals for the District of Columbia Circuit affirmed. 359 F. 2d 619, — U. S. App. D. C. —. That court

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Insurance Co., 359 U. S. 65, also had some ancillary features common to all standard annuity contracts. The Court did not find them determinative. *Id.*, at 73, n. 15.

rejected "the SEC's basic premise that the contract should be fragmented and the risk during the deferred period only should be considered." Considering the contract as a whole, it found, as the SEC had urged, that this Court's decision in *VALIC, supra,* was controlling. But it read that decision to hold only "that a company must bear a substantial part of the investment risk associated with the contract . . . . in order to qualify its products as 'insurance.'" 359 F. 2d 622, — U. S. App. D. C. —. Because of the net premium guarantee and the conversion to payments which included an interest element during the fixed-payment period, the court concluded that the "Flexible Fund" met this test. Because of the importance of the issue, and the need for clarifying the implications of the *VALIC* decision, we granted certiorari, 385 U. S. 918. We now reverse for reasons given below.

First, we do not agree with the Court of Appeals that the "Flexible Fund" contract must be characterized in its entirety. Two entirely distinct promises are included in the contract and their operation is separated at a fixed point in time. In selling a deferred annuity contract of any type, United must first decide what amount of annuity payment is to be allowed for each dollar paid into the annuity fund at maturity.[6] In making that calculation United must analyze expected mortality, interest, and expenses of administration. The outcome of that calculation is shown in the conversion table which is included in the "Flexible Fund" contract.

The second problem United must face in a deferred annuity is to determine what amount will be available for the annuity fund at maturity. In a conventional

[6] Annuities may indeed be purchased for a single premium, and it is the basic single premium calculation which controls the benefits of all deferred plans. See Johnson, The Variable Annuity—Insurance, Investment, or Both?, 48 Geo. L. J. 641, 655; Mehr & Osler, Modern Life Insurance (3d ed.) 79–103.

annuity where a fixed amount of benefits is stipulated it is essential that the premiums both cover expenses and produce a fund sufficient to support the promised benefits.[7] In fixing the necessary premium mortality experience is a subordinate factor and the planning problem is to decide what interest and expense rates may be expected. There is some shifting of risk from policyholder to insurer, but no pooling of risks among policyholders. In other words, the insurer is acting, in a role similar to that of a savings institution, and state regulation is adjusted to this role.[8] The policyholder has no direct interest in the fund[9] and the insurer has a dollar target to meet.

The "Flexible Fund" program completely reverses the role of the insurer during the accumulation period. Instead of promising to the policyholder an accumulation of savings at interest to a fixed amount, the insurer promises to serve as an investment agency and allow the policyholder to share in its investment experience. The insurer is obligated to produce no more than the guaranteed minimum at maturity, and this amount is substantially less than that guaranteed by the same premiums in a conventional deferred annuity contract.[10] The fixed-

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[7] For such a calculation the return-of-premium provision can be considered to be a form of term insurance provided by the company and included within the expense arrangements.

[8] See Huebner and Black, Life Insurance (5th ed.) 518–524.

[9] See Johnson, *supra*, note 6, at 673.

[10] The table below compares the cash values of the "Flexible Fund" contracts with those of United's standard deferred annuities:

Years	*Paid in*	*Flexible fund guarantee*	*Respondent's standard deferred annuity (R. II 27)*
1	1,200	300	624
5	6,000	3,461	5,460
10	12,000	10,374	12,504
20	24,000	21,774	30,792
30	36,000	33,174	54,828
40	48,000	44,574	87,156

payment benefits are adjusted to reflect the number of dollars available, as opposed to the conventional annuity where the amount available is planned to reflect the promised benefits.

The insurer may plan to meet the minimum guarantee by split funding—that is treating part of the net premium as it would a premium under a conventional deferred annuity contract with a cash value at maturity equal to the minimum guarantee and investing only the remainder [11]—or by setting the minimum low enough that the risk of not being able to meet it through investment is insignificant. The latter is the course United seems to have pursued.[12] In either case the guarantee cannot be said to integrate the pre-maturity operation into the post-maturity benefit scheme. United could as easily attach a "Flexible Fund" option to a deferred life insurance contract or any other benefit which could otherwise be provided by a single payment. And the annuity portion of the contract could be offered independently of the "Flexible Fund." [13] We therefore conclude that we must assess independently the operation of the "Flexible Fund" contract during the deferred period to determine whether that separable portion of the contract falls within the class of those exempted by Congress from the requirements of the Securities Act,

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[11] See O'Brien, Static Dollars? Dynamic Dollars? Why Not Have Both?, 1960 Investment Dealers Digest (Mutual Fund Supplement) 56. Cf. *Spellacy* v. *American Life Ins. Assn.*, 144 Conn. 346, 131 A. 2d 834.

[12] The record shows that United set its guarantee by analyzing the performance of common stocks during the first half of the 20th century and adjusting the guarantee so that it would not have become operable under any prior conditions.

[13] Advisers Fund, Inc., a mutual fund, sells shares on an installment plan and simultaneously guarantees that an affiliated insurance company will allow the proceeds on redemption to be applied to the purchase of an annuity at specified conversion rates.

and, if not, whether the contract constitutes a "security" within § 2 of that Act.

The provisions to be examined are less difficult of classification than the ones presented to us in *VALIC*. There it was held that the entire plan under which benefits continued to fluctuate with the fortunes of the fund after maturity, was not a contract of insurance within the § 3 (a) exemption. A pooling of mortality risk was operative during the payment period, and the contract was one of insurance under state law, but a majority of this Court held that "the meaning of 'insurance' . . . under these Federal Acts is a federal question," 359 U. S., at 69, and "that the concept of 'insurance' involves some investment risk-taking on the part of the company." *Id.*, at 71. The argument "that the existence of adequate state regulation was the basis for the exemption [the position taken by four dissenting Justices] . . . was conclusively rejected . . . in *VALIC* for the reason that variable annuities are 'securities' and involve considerations of investment not present in the conventional contract of insurance." *Prudential Insurance Co.* v. *S. E. C.*, 326 F. 2d 383, 388. It was implied in the majority opinion in *VALIC* and made explicit by the two concurring Justices,[14] that the exemption was to be considered a congressional declaration "that there then was a form of 'investment' known as insurance (including 'annuity' contracts) which did not present very squarely the sort of problems the Securities Act . . . [was] devised to deal with, and which were, in many details, subject to a form of state regulation of a sort which made the federal regulation even less relevant." *VALIC*, at 75 (opinion of BRENNAN, J.). In considering *VALIC* to have turned solely on the absence of any substantial

[14] MR. JUSTICE BRENNAN and MR. JUSTICE STEWART joined in a concurring opinion written by MR. JUSTICE BRENNAN and also joined in the opinion of the Court.

investment risk-taking on the part of the insurer there, we think that the Court of Appeals in the present case viewed that decision too narrowly.

Approaching the accumulation portion of this contract, in this light, we have little difficulty in concluding that it does not fall within the insurance exemption of § 3 (a) of the Securities Act. "Flexible Fund" arrangements require special modifications of state law, and are considered to appeal to the purchaser not on the usual insurance basis of stability and security but on the prospect of "growth" through sound investment management.[15] And while the guarantee of cash value based on net premiums reduces substantially the investment risk of the contract holder, the assumption of an investment risk cannot by itself create an insurance provision under the federal definition. *Helvering* v. *Le Gierse*, 312 U. S. 531, 542. The basic difference between a contract which to some degree is insured and a contract of insurance must be recognized.

We find it equally clear that the accumulation provisions constitute an "investment contract" within the terms of § 2 of the Securities Act. As the Court said in *SEC* v. *Joiner Leasing Corp.*, 320 U. S. 344, 352–353, "The test . . . is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect. In the enforcement of an act such as this it is not inappropriate that promoters' offerings be judged as being what they were represented to be." Contracts such as the "Flexible Fund" offer important competition to mutual funds, see Johnson, The Variable Annuity—

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[15] United's primary advertisement for the "Flexible Fund" was headed "New Opportunity for Financial Growth." United's sales aid kit included displays emphasizing the possibility of investment return and the experience of United's management in professional investing.

Insurance, Investment, or Both?, 48 Geo. L. J. 641, and are pitched to the same consumer interest in growth through professionally managed investment. It seems eminently fair that a purchaser of such a plan be afforded the same advantages of disclosure which inure to a mutual fund purchaser under § 5 of the Securities Act. "At the state level the Uniform Securities Act makes explicit what seems to be the view of the great majority of blue sky administrators to the effect that variable annuities are securities . . . ." 1 Loss, Securities Regulation 499. Given *VALIC*, we hold that for the purposes of the Securities Act these contracts are also to be considered nonexempt securities and cannot be offered to the public without conformity to the registration requirements of § 5.

Because the courts below considered the contract itself to be exempt, they did not reach the question whether the "Flexible Fund" was an "investment company" under the Investment Company Act of 1940. In *VALIC* the sole business of the insurer was the issuance of the contracts held to be securities, and thus the Court held the insurer to be an investment company. It is clear, however, that United in the main is an insurance company exempt from the requirements of the Investment Company Act. Moreover, the provisions of that Act are substantive and go well beyond the disclosure requirements of the Securities Act. Thus the question whether the fund may be separated from United's other activities and considered an investment company is a difficult one. See Comment, 61 Mich. L. Rev. 1374; Note, Regulation of Variable Annuity Sales: The Aftermath of SEC v. VALIC, 1959 Wash. U. L. Q. 206. An investigation into the relationship between the "Flexible Fund" and United's insurance business, as well as an investigation of the possible conflicts between state and federal regulation, is required for a proper resolution. The

SEC has requested us to remand the case for further consideration of this issue, and in view of its complexity, we deem this the wisest course.

The judgment of the Court of Appeals for the District of Columbia Circuit is reversed and the case is remanded to that court for further proceedings consistent with this opinion.

It is so ordered.